

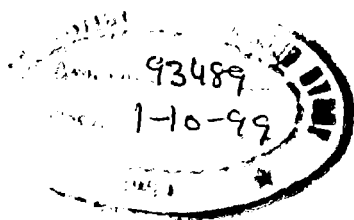
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ANNUAL REPORT

1998-99

**GOVERNMENT OF INDIA
MINISTRY OF LAW JUSTICE AND COMPANY AFFAIRS
DEPARTMENT OF COMPANY AFFAIRS
NEW DELHI**



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Chapter-I

INTRODUCTION AND HIGHLIGHTS

Introduction

1.1.1 The Department of Company Affairs is the primary agency responsible for the development and efficient functioning of the corporate sector comprising the joint stock companies. The objectives in this regard are sought to be achieved by the Department mainly through administration of the Companies Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969. Further, it is also concerned with the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 for the proper growth of the professions of Chartered Accountants, Cost Accountants and Company Secretaries. Apart from the aforesaid Acts, the responsibility of discharging the functions of the Central Government relating to the Administration of the Partnership Act, 1932, the Companies (Donations to National Funds) Act, 1951 and Societies Registration Act, 1860 also rests with the Department.

The Companies Bill, 1997

1.2.1 The Government introduced the Companies Bill, 1997 in Rajya Sabha on 14th August, 1997. The Bill which is running into 458 clauses and 3 schedules, pending in Parliament, seeks to replace the existing Companies Act by providing a new look to the Corporate Law, where the emphasis is more on shareholders' democracy and stricter accountability on the part of Directors and Auditors with a view to providing conditions for better corporate governance. The Bill is pending consideration before the Department related Standing Committee on Home Affairs. The Government promulgated the Companies (Amendment) Ordinance, 1998 on 31.10.98 with a view, to uplift the sagging economy to compete with global industrial players, to create greater confidence among small investors and for better corporate governance. The Companies (Amendment) Bill, 1998 to replace the Ordinance was introduced in the Lok Sabha on 22.12.98. This could not be passed due to adjournment of Lok Sabha since die on 23.12.98. This Ordinance was to lapse on 10-1-99, therefore it was re-promulgated as The Companies (Amendment) Ordinance, 1999 with certain modifications on 7.1.99.

The Companies (Amendment) Ordinance, 1999

1.3.1 The salient features of the Companies (Amendment) Ordinance 1999 are as follows.

(i) the infrastructure Development Finance Company, a company formed and registered under the Companies Act has been included as a Public Financial Institution for the purposes of the said Act.

(ii) shareholders/debenture holders and depositors have been permitted to make nominations.

(iii) Companies have been permitted to buy back their own shares or other specified securities subject to certain conditions.

(iv) Companies have been permitted to issue sweat equity shares subject to fulfilment of certain conditions.

(v) An Investor Education and Protection Fund will be set up from amounts which remained unclaimed and unpaid for a period of seven years from the date they became due for the payment in the (a) un-paid dividend accounts of companies (b) application moneys received by companies for allotment of any securities and due for refund. (c) matured deposits with companies (d) matured debentures with companies, interest accrued on above amounts, grants and donations given to the fund by the Central Govt., State Government. companies or any other institutions for the purpose of the Fund, and interest or other income received out of the investments made from the Fund, is to be credited to the Fund.

(vi) A National Advisory Committee on Accounting Standards will be constituted to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies.

(vii) Companies have been permitted to make inter-corporate investments or give loans to other body corporates without prior approval of the Central Government.

Chapter-II

ORGANISATIONAL SET UP AND FUNCTIONS

2.1.1 The Department of Company Affairs, mainly administers the Companies Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969. Besides it also administers the following Acts:

- (i) The Chartered Accountants Act, 1949,
- (ii) The Cost and Works Accountants Act, 1959
- (iii) The Company Secretaries Act, 1980
- (iv) The Partnership Act, 1932
- (v) The Societies Registration Act, 1860
- (vi) The Companies (Donation to National Fund) Act, 1951.

Organisational Set-up

2.2.1 The Department has a three tier organisational set-up namely the Secretariat at New Delhi, the Regional Directors at Mumbai, Calcutta, Chennai and Kanpur and the Registrars of Companies in States and Union Territories and Official Liquidators, attached to each of the High Courts functioning in the country. The set up at the Headquarters include the Company Law Board headed by a Chairman with Principal bench at New Delhi. Four Regional benches of the Board are located at New Delhi, Mumbai, Calcutta and Chennai. The organisation at the Headquarters also includes two Directors of Inspection and Investigation with a complement of staff, a Director of Research and Statistics and other Officials providing expertise on legal, accounting, economic and statistical matters.

2.2.2 The four Regional Directors who are incharge of the respective Regions comprising a number of States and Union Territories supervise the working of the Offices of the Registrars of Companies and the Official Liquidators working in their regions. They also maintain liaison with the respective State Governments and the Central Government in matters relating to the administration of the Companies Act. Certain powers of the Central Government under the Act have been delegated to the Regional Directors to be exercised by them in their respective regions.

They have also been declared as Heads of the Department and have accordingly been entrusted with appropriate administrative and financial powers. An Inspection Unit is also attached to the office of every Regional Director for carrying out inspection of the books of accounts of companies under section 209A of the Act.

2.2.3 Registrars of Companies appointed under Section 609 of the Companies Act, covering the various States and Union Territories, are vested with the primary duty of registering companies floated in the respective States and the Union Territories and ensuring that such companies comply with the statutory requirements under the Act. Their offices function as registry of records relating to the companies registered with them. At present there are 20 offices of ROCs including one newly created office at Pune in the current year.

2.2.4 The Official Liquidators are officers appointed by the Central Government under Section 448 of the Companies Act and are attached to the various High Courts. The Official Liquidators are under the administrative charge of the respective Regional Directors who supervise their functioning on behalf of the Central Government. In the conduct of the winding up of the affairs of the companies, however, Official Liquidators act under the directions of the High Courts.

2.2.5 The Public Trustee is appointed by the Central Government under Section 153A of the Companies Act. With a view to safeguard the interests of the beneficiaries of the Trusts, the Public Trustee exercises voting rights in respect of trusts created by instrument in writing and holding shares or debentures on companies in excess of limits specified in the Act. The Trustee also functions as Joint Secretary in the Department of Company Affairs.

Company Law Board

2.3.1 The Central Government constituted an independent Company Law Board vide Notification SI.No. 364 dated the 31st May, 1991. The Board is

a quasi-judicial body which exercises some of the judicial and quasi-judicial powers which were earlier being exercised by the High Court or the Central Government. The Board is not subject to the Control of the Central Government and has the powers to regulate its own procedures and act in its own discretion. The Board has its Headquarter at Delhi and four Regional Benches located at Delhi, Mumbai, Calcutta, and Chennai.

The Monopolies and Restrictive Trade Practices Commission

2.4.1 An important organ of the Department of Company Affairs is the Monopolies and Restrictive Trade Practices Commission (MRTP Commission) a quasi-judicial body. The MRTP Commission established under Section 5 of the Monopolies and Restrictive Trade Practices Act, 1969, discharges functions as per the provisions of the Act. The main function of the MRTP

Commission is to enquire into and take appropriate action in respect of unfair trade practices and restrictive trade practices. In regard to monopolistic trade practices the Commission is empowered under Section 10(b) to inquire into such practices (i) upon a reference made to it by the Central Government or (ii) upon its own knowledge or information and submit its findings to Central Government for further action.

Director General of Investigation and Registration

2.5.1 The Director General of Investigation and Registration functions in terms of Section 8 of the MRTP Act, as amended and effective from the 1st August, 1984, for making investigations for the purpose of the Act, for maintaining a register of agreements subject to registration under the Act and also for performing such other functions assigned to him under the Act.

Chapter-III

NOTIFICATIONS ISSUED BY THE DEPARTMENT

Notifications

3.1.1 During the period 1.4.1998 to 31.12.1998, the following notifications have been issued under different sections of the Companies Act, 1956 and the rules framed thereunder.

- (1) By Notification No. GSR 500(E) dated 18th August 1998, the Central Government in exercise of the powers conferred by sub-section (i) of Section 64, of the Companies Act, 1956, amended Schedule XIV to the said Act so as to insert rates of depreciation, in case of 4A Float Glass Melting Furnaces (NSED), being 27 percent (WDV) and 10 percent (SLM) in single shift and nil in double or triple shift.
- (2) By Notification No. GSR 721(E) dated 7th December, 1998 the Central Government in exercise of powers conferred by subsection (i) of Section 637 A of the Companies Act, 1956, modified Notification No. GSR 603(E) dated 20th October 1997, substituting for clause (b), sub clause (i), that total net funds and its preference share capital should not be less than Rs. 25 lakhs and provided that existing Nidhis or Mutual Benefit Societies shall reach Rs. 25 Lakhs amount before 31.12.2002
- (3) By Notification No. GSR 326(E) dated 3rd June 1998, the Central Government amended the Cost Accounting Records (Cycles) Rules, 1967, after rationalisation and simplification under Section 642(1), read with Section 209(1)(d).
- (4) By Notification No. GSR 327(E) dated 3rd June 1998, the Central Government amended the Cost Accounting Records (Caustic Soda) Rules, 1967, after rationalisation and simplification under Section 642(1), read with Section 209(1)(d).
- (5) By Notification Nos. GSR 328(E) and 329(E) dated 3rd June 1998, the Central Government amended the Cost Accounting Records (Motor Vehicles) Rules, 1997 and Cost Accounting Records (Tractors) Rules, 1971 to include tractors under the Motor Vehicles Rules under Section 642(1) read with Section 209(1)(d).
- (6) By Notification Nos. 425(E) to 467(E) dated 3rd August, 1998, the Central Government amended applicability clause of all the 43 Cost Accounting Record Rules to incorporate the ceiling of Plant & Machinery specified for Small Scale Industries in line with the amended ceiling under the Industries (Development & Regulation) Act, 1950 under Section 642(1) read with 209(1)(d).

Chapter-IV

THE COMPANIES ACT, 1956

Objectives and Policies:

4.1.1. The Companies Act, 1956, has been in force for the last 43 years. The Act, 1956, confers a variety of powers on the Central Government and the Company Law Board to monitor, regulate and control the affairs of the companies. The provisions of the Act which are important from this angle are discussed in the following paragraphs.

Management of the Companies

4.2.1. To ensure better management of companies, the Central Government accord approval for the appointment and re-appointment of persons as Managing Directors, Whole-time Directors or Managers of a public limited or private limited company which is a subsidiary of a public limited company, under Section 269 read with Section 388 of the Companies Act. In 1988, the Government dispensed with the requirement of the approval for appointment of managerial personnel in respect of cases which fulfil the conditions as prescribed in Schedule XIII of the Act.

Control over Companies

4.3.1 The Companies Act empowers the Central Government to inspect the books of accounts of a company, to direct special audit, to order investigation into the affairs of a company and to launch prosecution for violation of the Companies Act, 1956. Books of accounts and other documents of the companies are inspected by the officers of the Directorate of Inspection and Investigation and the Registrars of Companies. These inspections are designed to find out whether the companies conduct their affairs in accordance with the provisions of the Companies Act, to see whether any unfair practice pre-judicial to the public interest are being resorted to by any company or a group of companies and to examine whether there is any mis-management which may adversely affect any interest of the shareholders, creditors, employees and others. Wherever inspection reports disclose any information that may be of interest to other Departments or agencies like the Ministry of

Commerce, Central Board of Direct Taxes, Enforcement Directorate, State Government or Provident Fund Authorities, such information is passed on to them. If an inspection discloses a prima facie case of fraud or cheating, action is initiated under provisions of the Companies Act or the same is referred to the Central Bureau of Investigation.

4.3.2. Sections 235 and 237 of the Companies Act empower the Central Government to order investigation into the affairs of a company under circumstances specified therein. The power to appoint inspectors, to conduct investigation and to act on report of investigation remain with the Central Government. The Company Law Board is also empowered to consider application of members for conducting investigation into the affairs of a company. These powers to order investigation arise in circumstances where the business of a company is being conducted with intent to defraud its creditors, or for unlawful purposes, or in a manner oppressive to any of its members or that if the company was formed for any fraudulent or unlawful purposes.

4.3.3 The punitive provisions of the Act are also exercised by the Department and the companies are prosecuted for committing default in filing their documents or for contravening the provisions of the Act. The companies (Amendment) Act, 1988, introduced a new Section 621A empowering the Company Law Board and the Regional Directors to compound offences of prosecution. The power to compound is not exercisable in relation to offences which are punishable either with imprisonment only or with imprisonment and fine.

Protection of Shareholders'/Consumers' Interests

4.4.1 For affording greater protection to shareholders, Section 205A has been incorporated in the Companies Act, whereby unpaid or unclaimed dividends are to be kept in a separate account for three years by the company concerned. Thereafter, if these dividends still remain unpaid

or unclaimed, these are to be transferred to the account of the Central Government which will make necessary payments to the shareholders concerned upon an application duly made by them.

4.4.2 The interests of the consumers are also sought to be taken care of under the provisions of the Companies Act. Approval of the Central Government is required to be obtained under Section 294AA in regard to the sole selling agency agreements which may be entered into by the companies having paid up capital of Rs. 50 lakhs or more. This is to ensure that the cost of commodities sold to the consumers through these agreements is not inflated by avoidable additional expenditure on the part of the companies concerned.

4.4.3. Cost Accounting Records Rules are prescribed under Section 209(1)(d) of the Companies Act, for companies engaged in production, processing, manufacturing and mining activities. These are designed to bring cost consciousness among the companies to ensure the best use of resources by them with a view to reduce cost of production and in turn to provide cheaper goods to the consumer.

4.4.4. The interest of the public in general in the matter of keeping deposits with the companies has also been taken care of in the Companies Act. Under section 58A of the Act, the Department has framed the Companies (Acceptance of Deposits) Rules, 1975. Under these Rules companies are required to advertise and publish their financial accounts for the information and guidance of the public at the time of inviting the deposits. If a company fails to repay any deposit or part thereof in accordance with the terms and conditions on such deposit, the Company Law Board may, if it is satisfied that it is necessary to do so to safeguard the interests of the company, the depositors, or in the public interest, direct the company to make repayment of such deposit or part thereof forth with or within such time and subject to such conditions as may be specified in the order.

4.4.5 Section 529 and 530 of the Companies Act provide that the dues of workers would rank *pari passu* with those of secured creditors in the event of closure of a company. This is intended to protect the interest of the workers of a sick company, who, in the event of closure of the company, have in the part generally lost their dues in the absence of funds after payment to the secured creditors.

Inter-Corporate Loans and Investments:

4.5.1 Sections 372 and 370 of the Companies Act required companies to take prior approval of the Central government for making inter-corporate investment and loan beyond prescribed limits. These Sections were, however, deleted vide Companies (Amendment) Ordinance promulgated on 7-1-99 and in their places a new Section 372A was introduced in the Companies Act. This new Section removed the earlier condition of taking prior approval of the Central Government for Companies to make intercorporate investments and loans. The law now lays down that no company shall directly or indirectly (a) make any loan to any other body corporate, (b) give any guarantee or provide security, in connection with a loan made by any other person to, or any other person by any body corporate and (c) acquire by way of subscription, purchase or otherwise the securities of any other body corporate, exceeding sixty percent of its paid up share capital and free reserves or hundred percent of its free reserves, whichever is more subject to certain conditions. The provisions of this section however would not apply to (a) any loan made, any guarantee given, any security provided or any investment made by (i) a banking company or an insurance company or a housing finance company in the ordinary course of its business, or a company established with the object of financing industrial enterprises or of providing infrastructural facilities, (ii) a company whose principal business is the acquisition of shares, stock, debentures or other securities, (iii) a private company unless it is a subsidiary of a public company, (b) to investment made in shares allotted in pursuance of clause (a) of subsection (1) of section 81 of the Companies Act.

Company Law Board:

4.6.1 As per the powers vested in it by section 10E of the Companies Act, 1956, the Central Government has constituted an independent Company Law Board with quasi-judicial powers with effect from 31.5.1991. The Company Law Board has framed Company Law Board Regulations. The Central Government has prescribed the fees for making applications before the Company Law Board under the Company Law Board (Fees on Applications and Petitions) Rules.

4.6.2 The Board has its Regional Benches at Mumbai, Calcutta, Chennai and New Delhi besides the Principal Bench at New Delhi. The matters falling under Sections 235, 237, 247, 248, 250,

388(B), 397/398, 408 and 409 and under Chapter VI of Part VI of the Companies Act, 1956 are dealt with by the Principal Bench at New Delhi. The Regional Benches are mainly concerned with Sections 17, 18, 19, 58A, 80A, 111, 113, 141, 614, 621, 637, of the Companies Act and Section 45QA of the Reserve Bank of India Act, 1934. The matters falling under Section 45QA of the Reserve Bank of India Act which were earlier within the purview of the RBI have now been entrusted to the Company Law Board. The Central Government have accordingly amended RBI Act giving powers to the Company Law Board. The maximum number of applications received by Regional Benches fall under Section 58A(9) of the Companies Act and Section 45QA of RBI Act regarding refund of public deposits of companies. During the period from 1.4.1998 to 31.12.1998, 38537 applications under Section 58A(9) and 45QA of the RBI Act were considered by the Regional Benches of the Company Law Board of which 31561 were disposed off.

4.6.3 The constitution of CLB as on 31.12.98 is as follows:—

1. Shri S. Balasubramanian, Acting Chairman
2. Shri C.R. Mehta, Member
3. Shri C.R. Das, Member
4. Shri K.K. Balu, Member
5. Dr. A.K. Doshi, Member

II. ADMINISTRATION OF THE COMPANIES ACT

Company Petitions

4.7.1 Particulars of petitions/applications received and disposed of by the various Benches of Company Law Board for the year 1998-99 are given Table 4.1.

TABLE —4.1

Consolidated Statement of Petitions/Applications received, disposed of and pending for the period 1.4.98 to 31.12.1998

Composition of Bench	Opening Balance as on 1.4.1998	Receipt	Total (Column Nos. 2 & 3)	Disposal	Pending as on 31.12.98
1	2	3	4	5	6
(1) Single Member Bench:—					
Sec. 17	70	293	363	280	83
Sec. 18/19	2	21	23	21	2
Sec. 58A(9)	5139	12030	17169	5827	11342
Sec. 80A	3	23	26	20	6
Sec. 113	77	207	284	203	81
Sec. 141	110	957	1067	962	105
Sec. 45QA of RBI Act	7646	26507	34153	25734	8419
Misc Applications	90	269	359	280	79
Sec. 186	2	2	4	4	0
Sec. 621A	100	265	365	246	119
Sec. 167	4	1	5	5	0
Total	13243	40575	53818	33582	20236
(2) Double Member Bench:—					
Sec. 111	139	49	188	78	110
Sec. 22A	18	0	18	15	3
Total	157	49	206	93	113
(3) Principal Bench:—					
Cases under Sections 235, 237 247, 248, 250, 397, 398, 408, 409 and interlocutory applications	355	298	653	228	425
Grand Total	13755	40922	54677	33903	20774

APPOINTMENT OF MANAGERIAL PERSONNEL

4.8.1 The Department of Company Affairs continued to decide on merits, statutory applications relating to the appointment of and remuneration payable to Managing Directors, Wholetime Directors and Managers of public limited companies and of private limited companies which are subsidiaries of public limited companies under Sections 269, 198/309, 310 and 388 of the Companies Act, 1956 in

accordance with the provisions of Schedule XIII to the said Act.

4.8.2 The Government had 629 applications under consideration during the period April 98 - December 98 including 158 brought forward from the previous year. Of these, 443 applications were disposed of and 186 remained pending as on 31st December 1998. The details of receipt and disposal of these applications are tabulated in Table 4.2.

TABLE 4.2

Applications on Managerial Appointment received and disposed off by the Central Government during 1998-99

Section of the Companies Act	Nature of Application	Brought Forward on 1.4.98	Received during 1998-99 Apr.-Dec.	Total of Cols. (3 & 4)	Disposed of during 1998-99 Apr.-Dec.	Pending as on 31.12.98
1	2	3	4	5	6	7
259	Increase in number of Directors	4	12	16	15	1
268	Amendment of Provision relating to Managing Directors or whole time Directors	0	5	5	5	0
269/388	Appointment/reappointment of Managing or Wholetime Directors	105	270	375	222	153
309(1)(b)	Remuneration of Directors for rendering professional services	1	17	18	18	0
309(4)	Remuneration of Directors other than Managing Directors under wholetime appointment	2	5	7	3	4
309(5B)	Waiver of recovery of sums refundable by Directors	7	15	22	22	0
310/311	Increase in remuneration of Directors	6	84	90	90	0
314(1B)	Appointment/continuance of Director/relative of a Director to hold any office or place of profit in Company which carries monthly remuneration of not less than Rs. 20,000/- p.m.	33	61	94	67	27
314(2D)	Waiver of recovery of sums refundable only by permission from Central Govt.	0	2	2	1	1
Total		158	471	629	443	186

Investigations

4.9.1. As on 1.4.1998, 25 investigation orders were pending. Investigations in 21 cases are pending due to stay by the courts. Out of these, stay in m/s Samrat Bicycle Ltd, case was vacated, but the investigation could not be conducted due to non-availability of books of account of the company. However, the High Court has appointed provisional Liquidator in this Company. Besides, 2 cases for non-production of records are still pending for which legal action has been taken. Investigation of m/s Rahino Printers Ltd. was ordered on 29.5.98 and investigation officer appointed.

Special Audit

4.10.1 No special audit under Section 233A of the Companies Act was pending nor was any special auditor appointed during the period April 98-December 98.

Cost Audit

4.11.1 In exercise of the powers conferred by sub-section(1) of Section 642 read with clause (d) of sub-section (1) of Section 209 of the Companies Act, 1956, the Central government has so far notified 43 Cost Accounting Records Rules covering 83 products manufactured by various classes of companies. During the year, new cost audit orders on 108 companies have been issued under the provisions of Section 233B of the Companies Act, 1956 and the Cost Accounting Records Rules relating to the products Caustic Soda, Cycles and Tractors were notified after rationalisation and simplification. Similarly, this exercise has been done for the products Electric Fan, Electric Motors, Electric lamp, Automobile batteries, Room Airconditioners, Refrigerators and Tyres & Tubes and the draft rules have been circulated for comments from prominent Cost Accountants, Professional Institutes, respective Industries and their Associations. In addition, the applicability clause of all the 43 Cost Accounting Record Rules have been amended in line with amended ceiling of the small scale industries under the Industries (Development & Regulation) Act, 1950 and the same has been notified during the period. In compliance with the cost audit orders issued in the previous year, 1460 cost audit reports were received from the Cost Auditors during the period April 98 to December 98 as against 1753 cost audit reports received during the year 1997-98. The productwise break up of cost audit reports received is indicated in Table 4.3.

TABLE-4.3

Product-wise break-up of Cost Audit Reports received by the Department of Company Affairs during 1997-98 and 1998-99

Sl. No.	Name of the Industry	Number of reports	
		1997-98	Received 1998-99 upto Dec.98
1.	Cement	79	72
2.	Cycles	12	4
3.	Tyres and Tubes	17	11
4.	Caustic Soda	32	24
5.	Room Air Conditioners	4	4
6.	Refrigerators	7	6
7.	Automobile Batteries	4	7
8.	Electric Lamps	12	9
9.	Electric Fans	9	12
10.	Electric Motors	14	14
11.	Motor Vehicles	25	27
12.	Tractors	9	8
13.	Aluminium	23	14
14.	Vanaspati	29	32
15.	Bulk Drugs	87	71
16.	Sugar	136	94
17.	Infant Milk Food	4	1
18.	Industrial Alcohol	45	33
19.	Jute Goods	70	42
20.	Paper	91	68
21.	Rayon	11	12
22.	Dyes	19	14
23.	Soda Ash	5	4
24.	Nylon	10	7
25.	Polyster	15	13
26.	Textiles	486	434
27.	Dry Cell Batteries	5	4
28.	Sulphuric Acid	46	40
29.	Power Driven Pumps	17	22
30.	Diesel Engine	15	13
31.	Steel Tubes and Pipes	22	15
32.	Electric Cables & Conductors	29	22
33.	Bearings	12	10
34.	Milk Food	4	4
35.	Chemicals	44	41
36.	Formulations	87	79
37.	Mini Steel Plants	74	53
38.	Insecticides	36	32
39.	Fertilizers	78	62
40.	Soaps & Detergents	14	15
41.	Cosmetics and Toiletries	15	11
Total		1753	1460

4.11.2 On the basis of review of Cost Audit Reports, matters relating to deficiencies in the violations related to the company law, in so far as applicable to cost audit were taken up with the respective Cost Auditors/Companies for taking appropriate action, wherever necessary.

4.11.3 During April 98 to December 98, 1397 applications received for approval of appointment of Cost Auditors in compliance with the Section 233B(2) of the Companies Act were processed by the Department. The total fees collected on these

applications amounted to Rs. 6.46 lakhs approximately as against a fee of Rs. 7.36 lakhs collected from 1681 applications during 1997-98.

Inspections

4.12.1 Section 209A of the Companies Act, 1956, empowers the Registrar of Companies and the officers of the Central Government who have been authorised in this behalf to undertake inspection of the books of accounts and other records of companies. Several officers have been authorised under this Section to undertake the inspections. In all 153 inspections were conducted during the period April 98-December 98, and 164 during the previous year 1997-98.

4.12.2 The material brought out in the inspection reports was made use of taking action under the provisions of the Companies Act. In certain cases prosecutions were also launched on the basis of findings contained in the inspection reports. Besides, cases involving non compliance of provisions of the Companies Act including inadequate maintenance of statutory records noticed during such inspections were also taken up with the companies for necessary remedial action. In addition, information of interest to other Government Departments/Agencies as brought out in the inspection reports was also communicated to them for suitable action.

Prosecutions

4.13.1 26,685 prosecution cases were pending as on 31st March, 1998 against the companies and their officers in various Courts in the country. 9193 prosecutions were initiated during 1998-99 against 1686 companies and their officers 4145 cases were decided by the Courts during this period of which 2505 cases resulted in conviction and imposition of fine of Rs. 38,40,373. 31733 cases were pending with the various Courts as on 31st December 98. A sum of Rs.7,92,879 was awarded as cost to Registrar of Companies.

4.13.2 The majority of prosecutions launched by the Registrars of Companies related to default committed in non-submission of documents under Section 162 (non-filing of annual returns), Section 210 (non-laying of Balance Sheets and Profit and Loss Accounts in the Annual General Meetings) and Section 220 (non-submission of Balance Sheets and Profit and Loss Accounts).

Acceptance of Deposits

4.14.1 Section 58A regulates the invitation and acceptance of deposits by non-banking non-financial

companies. The Companies (Acceptance of Deposits) Rules, 1975 prescribes the limits upto which, the manner in which and the conditions subject to which deposits may be invited and/or accepted by these companies either from the public or from their members. These rules, inter-alia require every company to advertise at the time of inviting deposits, a summarised financial position of company as in the two audited balance sheets immediately preceding the date of advertisements. The rules lay down ceiling limits with reference to the company's net worth for acceptance of deposits and prescribe the maximum rate of interest and the maximum period of 36 months for which the deposits can be accepted. The prescribed maximum rate of interest is now 15%. The rules also lay down the maximum rate of brokerage which can be paid by the company to brokers through whom the deposits are collected. In order to safeguard the interests of deposit holders, the rules also provide for maintenance of liquid assets to the extent of 15% of deposits maturing during the year invested in specified securities.

4.14.2 Sub-Section (7) of Section 58A empowers the Government to keep any company outside the purview of these provisions after consultation with the Reserve Bank of India. In exercise of this power, small scale units which conform to certain parameters have been kept outside the purview of the provisions of section 58A.

4.14.3 Sub-section (8) of Section 58A empowers the Central-Government if it considers necessary for avoiding any hardship or for any other just and sufficient reason to grant extension of time to a company or class of companies to comply with or exempt any company or a class of companies from all or any of the provisions of Section 58A either generally or for a specified period subject to such conditions as may be specified, either prospectively or retrospectively from a date not earlier than the commencement of the Companies (Amendment) Act, 1974. In case exemption is to be granted for a class of companies, it is to be done after consultation with the Reserve Bank of India.

4.14.4. With a view to protect the interest of depositors, the Sub-section (9) and (10) of Section 58A provide for compulsory repayment of deposits, unless renewed in accordance with the prescribed rules. These provisions empower the Company Law Board to take cognizance of any case of non-repayment of such deposits within such time and subject to such conditions as may be specified in the order. Non-compliance of the orders of the Company Law Board would attract penalty by way

of imprisonment, which may extend to three years and shall also be liable to a fine of not less than Rs.50/- for every day till such non-compliance continues.

4.14.5 Under the proviso to sub-section (7) of Section 58A, the Government is empowered to exempt class of companies from all or any of the provisions of Section 58A. The Department has granted exemption vide Notification No. GSR 1075(E) dated 29.12.1989 from the provisions of subsection (1) to subsection (6) of Section 58A in respect of acceptance of deposits by issue of Commercial Paper by companies which satisfy the eligibility criteria laid down by the Reserve Bank of India in the Non-Banking Companies (Acceptance of Deposits through Commercial Paper) Directions, 1989. The said Notification has come into force on and from 1.1.1990.

4.14.6.10 applications for exemption/extension of time were received under Section 58A(8) of the Companies Act during the period from 1.4.98 to 31.12.98 and 9 applications were brought forward from the previous year. Out of the total of 19 applications, 10 applications were disposed of during the said period and remaining 9 applications were at various stages of consideration as on 31.12.98.

Payment of Dividend

4.15.1 Section 205(1)(c) of the Companies Act empowers the Central Government to allow any company, in the public interest, to declare or pay dividend without providing for depreciation. 2 such applications were considered during the period from April, 1998 to December 1998. Both the applications were disposed off.

Declaration of Dividends

4.16.1 Section 205A(3) of the Companies Act, 1956 makes it obligatory for a company to seek prior approval of the Central Government where owing to inadequacy or absence of profits in the year, any company proposes to declare dividend out of the accumulated profits earned by it in the previous years and transferred to the reserves and where declaration of dividend is not in accordance with the Rules namely, the Companies (Declaration of Dividends out of Reserves) Rules, 1975. During the period from 1.4.98 to 31.12.98, six applications were received under Section 205A(3) of the Companies Act, 1956, while no application was brought forward from the previous year. Out of the 6 applications, 3 were disposed off and 3 were pending as on 31-12-98.

Annual Accounts:

4.17.1 Part II of Schedule VI to the Companies Act dealing with the preparation of profit and loss accounts provides that the manufacturing and other companies should give by way of notes, additional data in regard to turnover, installed capacity, licensed capacity, actual production, raw material consumed, opening and closing stocks of goods produced, etc. Such of the companies which, on account of certain difficulties, are unable to comply with the said provisions for furnishing the additional data, can approach the Central Government for order under Section 211(4) for exemption from furnishing this information. 205 applications, including 38 brought forward from the previous year, were considered during April 98--December 98. Of these, 191 applications were disposed of and 14 were pending as on 31st December 98.

Accounts of Subsidiaries:

4.18.1 Section 212 of the Act provides that the Balance Sheet of a holding company should include certain particulars as to its subsidiaries. However, sub-section (8) thereof empowers the Central Government to exempt a holding company from the requirements of including in Balance Sheet the said particulars of subsidiary companies.

4.18.2 62 applications including 4 brought forward from the previous year were considered during April' 98 - December 98. 36 applications were approved, 13 applications were rejected, 7 applications were closed and 6 applications were pending as on 31 December 98.

Exemption from Branch Audit:

4.19.1 Section 228 of the Companies Act requires that where a company has a branch office, the accounts of that branch be also audited by the auditors of the company. The Central Government is empowered to grant exemption from Branch Audit. 5 applications including 2 brought forward from the previous year were considered during April '98 - December 98. Of these 3 were disposed off and 2 were pending as on 31.12.98.

Prohibition on Appointment of Sole Selling Agents:

4.20.1 Section 294AA (1) of the Companies Act, 1956 requires that where the Central Government is of the opinion that the demand for goods of any category is substantially in excess

of the production or supply of such goods, and that the services of the sole selling agents will not be necessary to create a market for such goods, the Central Government may, by notification in the Official Gazette, declare that Sole Selling Agents shall not be appointed by a company for the sale of such goods for such periods as may be specified in the declaration.

4.20.2 The Central Government issued Notifications prohibiting the appointment of Sole Selling Agents by any company for the sale of Sugar, Vanaspati, Cement, Paper and Bulk Drugs 'drugs' and 'formulations'. Notifications prohibiting appointment of Sole Selling Agents for sugar and vanaspati have been extended upto 9.9.2000, for Cement and Paper it has been extended upto 17.9.2000 vide Notification GSR 628(E) dated 10.9.1995 and GSR 640(E) dated 18.9.1995 respectively. For 'bulk drugs', 'drugs' and 'formulations' the period has now been extended upto 18.4.2000 vide Notification GSR No. 223(E) dated 19.4.1997.

Appointment of Sole Selling/Buying Agents:

4.21.1 Sub-sections (2) and (3) of Section 294AA of the Companies Act, 1956 require the Companies to obtain approval of the Central Government for appointment of Sole Selling/Buying Agents in certain areas. Sub-section (2) applies to those companies in which Sole Selling/Buying Agents through themselves or through their relatives hold paid-up capital of Rs. 50 lakhs or 5 per cent of the paid-up capital of the company whichever is less. Sub-section (3) of Section 294AA of the Companies Act applies to those companies whose paid-up capital is Rs. 50 lakhs or more.

4.21.2 31 applications were received under sub-sections (2) and (3) of Section 294-AA of the Act seeking approval of Central Government for appointment of Sole Selling/Buying Agents during the period 1.4.98 to 31.12.98, while 15 applications were brought forward from the previous year. Out of these, 27 applications were disposed of and 19 applications were pending at various stages of consideration as on 31.12.98.

Loans to Directors and relatives:

4.22.1 Section 295(1) of the Companies Act provides that every public limited company or a private limited company which is a subsidiary of a public limited company, shall obtain prior approval of the Central Government before giving any loan

or giving any guarantee in connection with the loans to directors, relatives of the directors or to a private limited company or a firm in which directors of the company are interested.

4.22.2 59 such applications, including 8 applications brought forward from the previous year, were considered during the period April 98 - December 98. Of these, 10 applications were approved, 9 were rejected, 4 were withdrawn/closed and 36 remained pending as on 31st December 1998.

Contracts in which Directors are interested:

4.23.1 Section 297(1) of the Companies Act, 1956 makes it obligatory for a company having paid-up capital of not less than rupees one crore, to seek prior approval of the Central Government in respect of any contract to be entered into for sale, purchase or supply of any goods, materials or services or for under-writing subscription of any shares or debentures of the company with a Director of the company or his relatives, or a firm in which such a Director or a relative is a partner, any other partner in such a firm, or private company of which the Director is a member or Director. The powers of approval under this Section have been delegated to the Regional Directors.

4.23.2 During the period from 1.4.98 to 31.12.98 the Regional Directors considered 512 applications including 229 applications brought forward from the previous year under Section 297(1) of the Companies Act, 1956. Of these applications, 376 were disposed off and balance 136 applications were pending with Regional Director as on 31.12.98.

Inter-Corporate Loans

4.24.1 Section 370(1) of the Companies Act provided that every public limited company or a private limited company, which is a subsidiary of a public limited company, shall obtain prior approval of the Central Government for making any loan to other bodies corporate in excess of the prescribed limits.

4.24.2 During the period from 1.4.98 - 31.12.98, 19 applications including 8 brought forward from the previous year were considered by the Central Government under Section 370 for grant of loans in excess of the prescribed limits to the other bodies corporate. Of these, 5 were approved, 1 was rejected and 13 were withdrawn/closed. No application was pending as on 31.12.98.

Inter-Corporate Investments

4.25.1 Under Section 372 of the Companies Act, 1956 for making inter corporate investments in excess of the limits prescribed therein, the Central government considered during the period April 98 - December 98, 393 applications including 127 applications brought forward from the previous year. Of these, 88 applications were approved, 17 were rejected, 288 were withdrawn/closed and no application was pending as on 31st December 98. The total investment involved in the 393 applications disposed off amounted to Rs. 3912.83 crores.

Liquidation of Companies

4.26.1 5145 companies were under liquidation during the year 1997-98. During the period April-December 98, 52 companies were taken into liquidation and 160 companies were finally wound up leaving 5037 companies under liquidation as on 31.12.1998. Of these 1565 companies were under Member's Voluntary winding up, 606 under Creditors' Voluntary winding up, 2853 under winding up by court and 13 companies under winding up subject to supervision of court.

Amalgamation of Companies

4.27.1 During period under report, 689 notices including 212 brought forward from the previous year were considered under Section 394A of the Companies Act. Oral and written representations were filed in the courts in 274 cases and 6 cases were closed. The matter was left to be decided by the court on merits in 248 cases and 161 cases were pending as on 31.12.1998.

4.27.2 105 companies were struck off by the Registrar of Companies under Section 560 of the Companies Act during the period April 98 - December 98.

4.27.3 Between April, 98 to December 98, orders under section 396 were passed for amalgamation of M/s. Goindwal Industrial & Investment Corporation of Punjab Limited with M/s Punjab Small Industries and Export Corporation Limited, and M/s Visvesvaraya Iron and Steel Limited with Steel Authority of India Limited.

Power to Declare Companies as NIDHI

4.28.1 During the period April 98 - December 98, 134 applications were considered including 30 brought forward from the previous year. 31 applications were disposed of (closed) and 103 were pending as on 31.12.98.

Miscellaneous Applications

4.29.1 During the period from 1.4.1998 to 31.12.1998, claims amounting to Rs. 4,04,945 were paid by the Regional Directors and Registrar of Companies under their powers and the order of the Courts under Section 555(7) of the Companies Act, 1956.

4.29.2 During the period under review one application under Section 399(4) of the Companies Act relating to prevention of oppression and mismanagement of m/s Alliance Capital and Management Services Ltd. was received and is pending.

4.29.3 During the period under report, 3 applications including 2 brought forward from the previous year under Section 81(3) of the Companies Act, were considered. 2 applications were disposed of and one application was pending as on 31.12.98.

4.29.4 Table 4.4 gives particulars of disposal of applications under various sections of the Companies Act, 1956 during the period 1.4.1998 to 31.12.1998.

Table — 4.4
Statement showing the disposal of cases for the period from 1.4.1998 to 31.12.1998

Section Number	Subject	Considered including B.F.	Disposed off during 1.4.98 - 31.12.98	Pending as on 31.12.98
1	2	3	4	5
21	Change of name by Company	3220	3003	217
22	Rectification of name by Company	77	26	51
25	Grant of Licence	102	52	50
25 (B)	Alteration in the Memorandum and Article of Association	67	37	30
31	Alteration in Articles through special resolution	2305	1694	611
224(3) & (7)	Appointment and Remuneration to Auditors	64	38	26
551	Information as to pending Liquidation	33	27	6
557 (7) (B)	Company Liquidation account	33	13	20

Investors Protection

4.30.1 The Investors Protection Cell set up in the Department of Company Affairs is fully computerised and provides a suitable mechanism for redressing of investors grievances. Investor complaints received in this Cell are processed for action by referring them to the concerned companies for speedy redressal. An acknowledgement is issued to the complainant automatically. Subsequently, action taken as informed by the company is also communicated to the complainant. The Computer Software is designed to take care of Administrative requirements thereby reducing the processing time to minimum.

4.30.2 The Department has processed 7167 complaints during the period from 1.4.1998 to 31.12.1998 out of which, 3940 complaints were satisfactorily redressed. Penal action was also initiated against 147 companies during this period, on the basis of investors complaints relating to non-refund of application money, non-receipt of share/debenture certificates, non payment of unclaimed dividend.

Public Trustee

4.31.1 Section 187B(1) of the Companies Act, 1956 provides that where any shares in a company are held in Trust within the limits laid down under Section 153B of the Companies Act, 1956, the rights and powers exercisable in respect of such shares at any meeting of the company shall vest with the Public Trustee appointed by the Central Government under Section 153A of the Companies Act, 1956.

4.31.2 A new clause (c) has since been added in subsection (4) of Section 153 B of the Companies Act, 1956 vide Companies (Amendment) Act 1996 which came into effect from 1.3.97, providing that the provisions of section 187 B shall not apply in relation to Trust created to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India Act 1992.

4.31.3 During the period from 1.4.98 to 31.12.98, 133 Notices convening Annual/Extraordinary General Meetings/Preference shareholders/Debenture holders meetings were received by Public Trustee from various companies. Out of these, Public Trustee had voting rights in respect of 133 meetings. Out of 133 meetings in which Public Trustee had voting rights, it attended personally or appointed proxies in respect of 9 meetings in favour of officers of the Central Government. The Public Trustee could not appoint Proxies in respect of the remaining 124 meetings because the notices of some of the meetings were received late and in some of the meetings representation was not considered necessary. No Proxy was issued in favour of Trustee of the Trust. 19 Declarations/reports of change were received from the Trusts. Of these 9 relate to changes in the holdings of the existing Trusts and 10 related to new companies. During the period from 1.4.98 to 31.12.98, 21 companies were added to the record of Public Trustee.

Appointment of Auditors in Government Companies

4.32.1 During April '98–December '98, 262 advices were received from the Office of Comptroller and Auditor General of India for appointment of auditors in Government Companies. 60 advices were brought forward from the previous year. Of the 322 advices considered, 320 advices were disposed off and 2 were pending as on 31.12.98.

Annual General Meeting by Government Companies

4.33.1 During April 98–December 1998, 313 applications were received from Government Companies for extension of time for holding Annual General Meeting and 26 for change of venue for such meetings under Section 166(1) and 166(2) of the Act respectively. All these applications were disposed off.

Chapter-V

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969 OBJECTIVES AND POLICY

5.1.1 The MRTP Act has its genesis in the Directive Principles of State Policy embodied in the Constitution of India. Clauses (b) and (c) of Article 39 of the Constitution lay down that the State shall direct its policy towards ensuring :

- (i) that the ownership and control of material resources of the community are so distributed as best to subserve the common good; and
- (ii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Provisions Relating to Monopolistic, Restrictive and Unfair Trade Practices

5.2.1 Section 10 of the MRTP Act empowers the MRTP Commission to enquire into Monopolistic or Restrictive Trade Practices upon a reference from the Central Government or upon its own knowledge or on information. The MRTP Act also provides for appointment of a Director General of Investigation and Registration for making investigations for the purpose of enquiries by the MRTP Commission and for maintenance of register of agreements relating to restrictive trade practices.

5.2.2 The MRTP Commission receives complaints both from registered consumer and trade associations and also from individuals either directly or through various Government Departments. Complaints regarding Restrictive Trade Practices or Unfair Trade Practices from an association are required to be referred to the Director General of Investigation and Registration for conducting preliminary investigation in terms of Section 11 and 36C of the MRTP Act, and Regulation 119 of the MRTP Commission Regulations, 1974. The Commission can also order a preliminary investigation by the Director General of Investigation and Registration when a reference on a restrictive trade practice is received from the Central/State Government, or when Commission's own knowledge warrants a preliminary

investigation. Enquiries are instituted by the Commission under relevant sections of the MRTP Act after the Director General of Investigation and Registration has completed the preliminary investigation and as a result of the findings, submits an application to the Commission for an enquiry.

Monopolistic Trade Practices

5.3.1 Eight enquiries under section 10(b) were pending with the MRTP Commission at the beginning of the year 1998-99, and no fresh inquiry was instituted during the period April 98–December 98. All these 8 enquiries were pending as on 31-12-98.

RESTRICTIVE TRADE PRACTICES

Under Section 10(a)(i)

5.4.1 726 enquiries, including 628 brought forward from the previous year, were considered during April 98–December 98. 10 enquiries were disposed of during the said period and the remaining 716 enquiries were pending with the Commission as on 31st December 98.

Under Section 10(a)(ii)

5.5.1 As no reference was received either from the Central Government or State Government under this Section, no enquiry was instituted by the Commission during the period from 1.4.98 to 31.12.98. One enquiry is pending at present which was instituted during 1993-94.

Under Section 10(a)(iii)

5.6.1 356 enquiries, including 247 carried forward from the previous year, were taken up by the MRTP Commission during the period April 98–December 98. Of these, 24 enquiries were disposed of during the said period, while the remaining 332 were pending with the Commission as on 31st December 98.

Under Section 10(a)(iv)

5.7.1 394 enquiries, including 384 brought forward from the previous year, were considered

by the Commission during April 98–December 98. 33 enquiries were disposed of during the said period. Thus, 361 enquiries were pending with the Commission as on 31st December 98.

Unfair Trade Practices

5.8.1 Provisions relating to Unfair Trade Practices were incorporated in the MRTP Act in 1984. Unfair Trade Practices have been defined in Section 36A as trade practices which for the purpose of promoting the sale, use or supply of any goods or for provision of any services, adopt one or more of the practices mentioned therein and thereby cause loss or injury to the consumers of such goods or services, whether by eliminating or restricting competition or otherwise.

Under Section 36B(a)

5.9.1 854 enquiries including 661 enquiries carried forward from the previous year were considered by the Commission during April 98–December 98. Of these, 140 enquiries were disposed of and the remaining 714 enquiries were pending as on 31st December 1998.

Under Section 36B(c)

5.10.1 174 enquiries including 172 brought forward from the previous year, were taken up by the Commission during the period April 98–December 98. 19 enquiries were disposed off during the period and the remaining 155 enquiries were pending as on 31st December 98.

Under Section 36B(d)

5.11.1 497 enquiries, including 470 brought forward from the previous year, were taken up by the Commission during April 98–December 98. 38 enquiries were disposed off and 459 enquiries were pending disposal with the Commission as on 31st December 98.

Temporary Injunctions

5.12.1 Besides 882 applications pending under Section 12A with the MRTP Commission as on 1st April, 1998, 189 applications were received by the Commission during the period April 98–December 98. 358 applications were disposed of during this period. Thus 713 applications under Section 12A were pending with the Commission as on 31st December 98.

Award of Compensation

5.13.1 During the period April 98–December 98, 1842 applications under Section 12B including 1561 applications brought forward from the previous year were considered by the Commission. Of these, 108 applications were disposed of by the Commission during the period and the remaining 1734 applications were pending as on 31st December 98.

Registration of Agreements

5.14.1 Section 35 of the MRTP Act requires every agreement relating to Restrictive Trade Practices falling within one or more of the categories enumerated in Section 33(1) of the Act to be furnished for registration within 60 days of the making of such agreement.

5.14.2 In pursuance of this provision, during the period April 98 to December 98, 176 agreements including 132 brought forward from the previous year were considered for registration. Out of these 163 agreements were registered and entered in the Register of Agreements while 13 agreements were pending for examination/registration as on 31st December 98. A total number of 39764 Agreements were filed upto 31st December 98 by various undertakings. Out of these, particulars of 39013 Agreements were entered in the Register of Agreements.

Investigation by Director General (Investigation & Registration)

5.15.1 The Director General (Investigation & Registration) is required to conduct preliminary investigation in respect of restrictive, monopolistic and unfair trade practices upon order of the MRTP Commission. During the year 1997-98, 135 orders of investigations were received from MRTP Commission. From April 98 to December 98, 45 such orders were received. 74 Preliminary Investigation Reports were submitted by DG (I&R) to MRTP Commission during the period April 98–December 98 and 17 were pending as on 31-12-98.

5.15.2 The DG (I&R) has suo-moto powers to initiate investigation into monopolistic/restrictive trade practices. As on 31-12-98, 370 suo-moto investigations were in progress. As a result, 19 applications under Sections 10(a)(iii) and 36B(c) of the Act were filed from April 98–December 98, apart from 101 applications filed on the basis of Agreements during the same period. 2 applications under Section 12A were also filed for grant of ad interim injunction during the said period.

Chapter-VI

OTHER LEGISLATIONS

6.1.1 Besides the Companies Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969, the Department of Company Affairs deals with the work relating to the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959, and the Company Secretaries Act, 1980. The responsibility of discharging the functions of the Central Government relating to the Administration of the Partnership Act, 1932, the Companies (Donations to National Funds) Act, 1951 and Societies Registration Act, 1860 is also of the Department of Company Affairs. This chapter reviews the objectives and the administration of these Acts.

The Chartered Accountants Act, 1949

6.2.1 The Chartered Accountants Act was enacted in 1949 to regulate the profession of Chartered Accountants and, for that purpose, to establish an Institute. The Institute of Chartered Accountants of India was accordingly established in July, 1949, in terms of the provisions of the Act.

6.2.2 The main objects of the Institute of Chartered Accountants of India are prescribing qualifications for membership holding examination and arranging practical training of candidates for enrolment, maintenance and publication of Register of Members qualified to practice the profession, carrying on activities for development of the profession and regulation and maintenance of status and standard of professional qualification of the Members. The Institute conducts examinations all over the country, provide postal/ oral coaching and arrange practical training, enabling students to qualify for the profession.

6.2.3 The affairs of the Institute which is body corporate consisting of all persons who are its members, are managed by its Council which also discharges the functions assigned to it under the Chartered Accountants Act. The council is composed of not more than 24 persons elected by the members of the Institute and six persons nominated by the Central Government. Accordingly, the Central Government nominated six members to the Council of the Institute.

The Cost & Works Accountants Act, 1959

6.3.1 The Cost and Works Accountants Act was enacted in 1959 to regulate the profession of Cost and Works Accountants and for that purpose to establish the Institute of Cost and Works Accountants. The Institute of Cost and Works Accountants of India was accordingly established in May, 1959, in terms of the provisions of the Act.

6.3.2 Under the Cost and Works Accountants Act, 1959, the duties of carrying out the provisions of the Act are vested with the Council of the Institute of Cost and Works Accountants of India which is constituted under Section 9 of the Act. The Council is composed of not more than 12 persons elected by the members of the Institute and not more than 4 persons nominated by the Central Government. Accordingly, the Central Government nominated 4 persons on the Council to the Institute.

The Company Secretaries Act, 1980

6.4.1 The Company Secretaries Act was enacted in 1980 to regulate and develop the profession of the Company Secretaries and for that purpose to establish the Institute of Company Secretaries of India. The Institute of Company Secretaries of India was accordingly established in January, 1981 in terms of the provisions of the said Act.

6.4.2 Under the Company Secretaries Act, 1980, the duties of carrying out the provisions of the Act are vested with Council of the Institute of Company Secretaries of India which is constituted under Section 9 of the Act. The Council is composed of not less than 12 persons elected by the Members of the Institute and not more than 4 persons nominated by the Central Government. Accordingly, the Central Government nominated 4 persons on the Council of the Institute.

The Societies Registration Act, 1860

6.5.1 The Societies Registration Act, enacted in 1860, provides for the registration of Literary, Scientific and Charitable Societies, so as to

improve the legal status of such societies. The Act required that societies established for promotion of literature, science or fine arts, or in the diffusion of useful knowledge or for charitable purpose, register themselves by filing their Memorandum of Association with Officers specified in the Act. Most of the States have enacted amendments to the Societies Registration Act. The amendments also include registration of societies in the respective states by the Registrar of Societies or by other officers appointed by the State Government for the purpose.

The India Partnership Act, 1932

6.6.1 The India Partnership Act was enacted in 1932 with a view to define and amend the law relating to partnership apart from providing the nature of partnership, relating to partners with one another and with third parties, the Act also provides for registration of the firms with the Registrars appointed by the State Governments for the purpose. Powers have been given to the State

Governments not to apply any of the provisions relating to registration to that State, or to make amendments in regard to these provisions. The Act also make separate provisions for registration of firms with the income tax officers concerned for the purpose of the Income Tax Act.

The Companies (Donation to National Funds) Act, 1951

6.7.1 The Companies (Donations to National Funds) Act was enacted in 1951. The Act enables any company, notwithstanding anything contained in the Companies Act or any other law, and also notwithstanding the contents of the Memorandum and Articles of Association of any Company, to make donations to the Gandhi Memorial Fund or the Sardar Patel National Memorial Fund or any other Fund established for a charitable purpose as approved by the Central Government after being authorised by a special resolution passed in accordance with Section 81 of the Companies Act. The Central Government has approved the Prime Minister's relief fund for the purposes of this Act.

Chapter-VII

STATISTICAL REVIEW OF CORPORATE SECTOR

Companies at work

7.1.1 5,02,393 companies limited by shares with an estimated aggregate paid-up capital of Rs. 2,29,233.4 crores were at work in the country as on 30th November, 1998. These comprised of

1,227 Government companies and 5,01,166 non-Government companies with paid-up capital of Rs. 88,966.3 crores and Rs. 1,40,267.1 crores respectively. The details of companies at work as on 30th November, 1998 is indicated in Table 7.1. below :

Table 7.1

Companies at work as on 30.11.1998

	Government Companies		Non-Government Companies		All Companies	
	No. of Companies	Paid-up Capital (Rs. Crores)	No. of Companies	Paid-up Capital (Rs. Crores)	No. of Companies	Paid-up Capital (Rs. Crores)
Public Limited Companies	620 (0.1)	49757.1 (21.7)	69612 (13.8)	100523.7 (43.9)	70232 (14.0)	150280.8 (65.6)
Private Limited Companies	607 (0.1)	39209.2 (17.1)	431554 (85.9)	39743.4 (17.3)	432161 (86.0)	78952.6 (34.4)
Total	1227 (0.2)	88966.3 (38.8)	501166 (99.7)	140267.1 (61.2)	502393 (100.0)	229233.4 (100.0)

7.1.2 The State-wise distribution of companies is indicated in Statement I appended to this Chapter. It shows that Maharashtra accounted for 21.4 per cent of the companies at work and 18.2 per cent of the total paid-up capital. Delhi accounted for 18.4 per cent of the companies at work and 26.8 per cent of the aggregate paid-up capital. The share in total number of companies at work of four other States namely West Bengal, Tamil Nadu, Gujarat and Andhra Pradesh was 13.5 per cent, 8.7 per cent, 6.7 per cent and 5.9 per cent respectively. These six States/Union Territories together accounted for nearly 75 per cent of the 5,02,393 companies at work and their share in the paid-up capital was 80 per cent.

7.1.3 Activity-wise distribution of companies at work shows that 28 per cent of the companies were engaged in "Manufacturing Metals, Chemicals and Products thereof, Machinery and Equipment", 27.0 per cent in "Finance, Insurance, Real Estate and Business Services", 15.0 per cent in "Wholesale and Retail Trade and Restaurants

and Hotels" and 13 per cent in "Manufacturing of Foodstuffs, Textiles, Wood products, Leather and Products thereof. "Balance of 17.0 per cent of the companies were engaged in various other activities like Agriculture, Mining and Quarrying, Construction, Transport, Communication and Storage, Community, social and Personal services and in generation and supply of electricity, gas and water.

7.1.4 In addition to the companies limited by shares there were 421 companies with unlimited liability at work in the country as on 30th November, 1998. All these companies were non-Government private companies. While 286 of these companies were engaged in investment activity and 63 in trading, the remaining 72 were engaged in other activities. 162 of these companies were registered in the State of Maharashtra, 104 in Delhi, 62 in Gujarat, 33 in Goa, Daman & Diu and the remaining 60 in other States.

7.1.5 Besides the companies limited by shares

and companies with unlimited liability, there were 2,691 companies limited by Guarantee and Associations not for profit registered under the Companies Act as on 30th November, 1998.

New Registration :

7.2.1 18,226 companies limited by shares having an authorised capital of Rs. 6,150.4 crores were registered under the Companies Act during the period April, 1998 to November, 1998. Of these, 4 were Government companies and 18,222 were non-Government companies with authorised capital of Rs. 106 crores and Rs. 6,044.4 crores respectively. One non-Government company with unlimited liability and 41 companies with liability limited by guarantee and associations not for profit

were also registered during the period.

7.2.2 Table 7.2 shows State-wise distribution of companies limited by shares registered during April 1998—November, 1998. Delhi accounted for 22.9 per cent of the new companies registered and 37.4 per cent of their aggregate authorised capital. Maharashtra accounted for 16.4 per cent of companies registered and 10.2 per cent of authorised capital. Four States, namely, Tamil Nadu, West Bengal, Andhra Pradesh and Gujarat accounted for 8.5, 7.9, 7.8 and 6.3 per cent of the companies registered. These 6 States/Union Territories together accounted for nearly 70 per cent of the 18,226 companies registered and their aggregate authorised capital was 76 per cent of total authorised capital of all the newly registered companies.

Table 7.2

State-wise distribution of Newly Registered Companies limited by Shares during 1998-99 (April, 98—November, 98)

Sl. No.	State/Union Territory	No. of Companies	Percentage of total of col. 3	Authorised Capital (Rs. Crores)	Percentage of total of Col. 5
1	2	3	4	5	6
1.	Delhi	4171	22.9	2299.3	37.4
2.	Maharashtra	2985	16.4	624.9	10.2
3.	Tamil Nadu	1548	8.5	406.6	6.6
4.	West Bengal	1447	7.9	418.9	6.8
5.	Andhra Pradesh	1427	7.8	738.7	12.0
6.	Gujarat	1141	6.3	198.6	3.2
7.	Karnataka	906	5.0	457.2	7.4
8.	Uttar Pradesh	721	4.0	245.6	4.0
9.	Other States/Union Territories	3880	21.3	760.6	12.4
Total		18226	100.0	6150.4	100.0

7.2.3 Of the 18,226 companies registered during April, 1998—November, 1998, 36.8 per cent propose to be in Manufacturing, 23.9 per cent in Finance, Insurance, Real Estate & Business Services and 16.7 per cent in Wholesale and Retail Trade, Restaurants and Hotels. The balance of 22.6 per cent of the companies proposed to be engaged in Agriculture and allied activities, Mining and Quarrying, Electricity Generation, Construction, Transport, Storage and Communication and Community, Social and Personal Services.

Liquidation :

7.3.1 251 non-Government companies limited by shares were reported to have ceased functioning during the period April, 1998 to November, 1998 either by going into liquidation or by being struck off under Section 560(5) of the Companies Act. The aggregate paid-up capital of these companies was Rs. 375.84 crores.

7.3.2 Out of 251 non-Government companies limited by shares, 49 companies are public limited and 202 companies private limited having paid-up capital of Rs. 212.63 crores and Rs. 163.21 crores respectively. Of these, 70 companies are in Maharashtra, 46 in Tamil Nadu, 33 in Karnataka and 28 in Assam.

Increase in Paid-up Capital of Companies :

7.4.1 An amount of Rs. 16,900.5 crores was reported to have been raised during the period April 1998 to September, 1998 by way of paid-up capital by companies limited by shares. Of this, the Government companies accounted for Rs. 2,285.8 crores (13.5 per cent) and the non-Government companies accounted for the balance of Rs. 14,614.7 crores.

Foreign Companies :

7.5.1 903 foreign companies as defined under Section 591 of the Companies Act were at work in

the country as on 30th September, 1998. 32 Foreign Companies established their place of business in India during the period April, 98 to September, 1998. The number of foreign companies at work as at the end of each preceding six years is shown in Table 7.3

Table 7.3

Number of Foreign Companies at work in India

As on	Number of Foreign Companies
31.03.1994	565
31.03.1995	619
31.03.1996	679
31.03.1997	772
31.03.1998	871
30.09.1998	903

Capital Issue

7.6.1 During the year 1997-98, 13 non-Government, non-financial public limited companies delivered to the Registrars of Companies for registration, copies of prospectuses under Section 60 of the Companies Act for raising an amount of Rs. 78.43 crores from public. Of this, Rs. 43.52 crores was offered to the public, while the balance of Rs. 34.91 crores was earmarked for firm allotment to promoters, Directors and others. 7.8 per cent of the amount issued to the public was underwritten.

7.6.2 During the period April, 1998—November 1998, 5 non-Government, non-financial public limited companies are reported to have delivered copies of the prospectuses to the Registrars of Companies for raising an amount of Rs. 27.55 crores from the public.

STATEMENT-I

STATE-WISE DISTRIBUTION OF COMPANIES LIMITED BY SHARES AT WORK

(Capital in Rs. Crores)

STATES/UNION TERRITORIES	As on 30.11.1998	
	NO.	PAID-UP CAPITAL
1. ANDHRA PRADESH	29722	16557.38
2. ASSAM	3621	2124.88
3. BIHAR	7954	3723.96
4. GUJARAT	33517	17228.17
5. HARYANA	5104	1581.53
6. HIMACHAL PRADESH	1727	1804.99
7. JAMMU & KASHMIR	1610	174.65
8. KARNATAKA	22129	10728.25
9. KERALA	10609	3203.22
10. MADHYA PRADESH	12225	3427.02
11. MAHARASHTRA	107549	41824.55
12. MANIPUR	148	66.20
13. MEGHALAYA	225	1724.61
14. NAGALAND	239	214.66
15. ORISSA	5033	4054.81
16. PUNJAB	12400	2397.49
17. RAJASTHAN	14026	3310.41
18. TAMIL NADU	43752	17425.63
19. TRIPURA	58	46.11
20. UTTAR PRADESH	21537	4906.52
21. WEST BENGAL	67895	28488.97
22. A. & N. ISLANDS	10	3.59
23. ARUNACHAL PRADESH	182	22.16
24. CHANDIGARH	5022	1096.93
25. D. & N. HAVELI	110	177.28
26. DELHI	92462	61383.18
27. GOA	2234	1062.45
28. DAMAN & DIU	85	63.22
29. LAKSHADEEP	1	0.00
30. MIZORAM	22	23.90
31. PONDICHERRY	1185	386.69
G. TOTAL	502393	229233.41

Chapter-VIII

MISCELLANEOUS MATTERS

Progressive use of Hindi

8.1.1 The Department of Company Affairs deals with the corporate sector with regard to matters relating to the Companies Act, 1956 and the MRTTP Act, 1969. Majority of staff of the Department have a working knowledge of Hindi. Efforts are being made by providing training to them to prepare noting and drafting in Hindi also. As a result of the efforts made in this regard, there has been an encouraging increase in the progressive use of Hindi.

8.1.2 Steps taken to achieve targets are as under :

- (i) The correspondence under Section 3(3) of the Official Language Act is being done bilingually;
- (ii) All the letters received in Hindi are replied to in Hindi only;
- (iii) Employees who are proficient in Hindi in terms of Rule 8(4) of Official Language Rules, 1976 have been directed to do certain specified items of work in Hindi only.
- (iv) Cash award scheme has been continued to encourage doing original work in Hindi;
- (v) Non-Hindi speaking employees have progressively been nominated for Hindi Training.
- (vi) Stenographers and Typist were nominated for Hindi Training.

(vii) The percentage of Manual and Electronic typewriters is 25.15% and 72% respectively. A bilingual computer has been installed in the section recently.

(viii) During the Hindi fortnight different Competitions (*viz.* essay competition, noting drafting competition, poem recitation and Hindi typing competition) were organised throughout the week and prizes were awarded to the winners of different competitions.

(ix) The Rules and Regulations under the Companies Act, 1956 and the MRTTP Act, 1969 have been prepared bilingually and published in the Gazette of India.

(x) Cover page and main article of the monthly journal 'Company News and Notes' is published bilingually.

Representation of Scheduled Castes, Scheduled Tribes and Other Backward Classes

8.2.1 As on 31.12.1998, there were 2082 employees working in the Department of Company Affairs and its subordinate offices. Of these, 362 were Scheduled Castes, 128 were Scheduled Tribes and 41 were Other Backward Classes forming 17.3 per cent, 6.1 per cent and 1.9 per cent respectively of the total strength. Group-wise breakup of the Government servants and number of Scheduled Castes, Scheduled Tribes among them is given in Table 8.1.

TABLE 8.1

Statement showing the total number of Govt. servants and number of SCs, STs & OBCs amongst them as on 31.12.1998

Class/Group	Total No. of Employees	SCs	% of total Employees	STs	% of total Employees	OBCs	% of total Employees
1	2	3	4	5	6	7	8
Group-A	241	29	12.0	12	4.9	8	3.3
Group-B	255	31	12.1	7	2.7	4	1.5
Group-C	1229	181	14.7	80	6.5	19	1.5
Group-D (Sweepers)	19	15	78.9	4	21.0	1	5.2
Group-D (Excluding sweepers)	338	106	31.3	25	7.3	9	2.6
Total	2082	362	17.3	128	6.1	41	1.9

Reserved vacancies

8.3.1 During the year 1998-99 (April to December, 1998) a total of 70 vacancies were identified to be filled by Scheduled Castes, Scheduled Tribes and Other Backward Classes candidates in the Department of Company Affairs and its subordinate offices. Of these, 24 vacancies were for Scheduled Castes, 12 for Scheduled Tribes and 34 for Other Backward Classes candidates. A total of 27 reserved vacancies were filled. Out of these 12 were Scheduled Castes and 10 were Scheduled Tribes and 5 were Other Backward Classes.

Computerisation

8.4.1 The process of computerisation in the Department of Company Affairs was initiated in 1981. It commenced with collection of data and processing thereof for publication of Quinquennial Directory of Joint Stock Companies, 1980. Computerisation activities were extended to the other branches of the Department with the setting up of the computer centre by NIC in Shastri Bhawan. Subsequently in June, 1988 another computer centre at Paryavaran Bhawan, CGO Complex was established to cater to the needs of R&S Division, IGC Branch, Cost Audit Branch, Monopolies Research Unit and Registrar of Companies, Delhi & Haryana.

8.4.2 In order to give thrust to computerisation activities of the Department and to modernise the Offices of Registrar of Companies (ROC) to render effective services to the corporate sector and members of public who approach the Registrar of Companies for various services, the task of computerisation was entrusted to NIC. As a result of implementation of ROC Computerisation Project, state of the art hardwares had been installed in all the offices of ROCs and the offices linked with one another and with Department of Company Affairs headquarters at New Delhi through NICNET. One programmer/system analyst (NIC) has been placed at each of these offices and sufficient number of ROC personnel trained on usage of software. During 1997-98, the Computer system was upgraded by providing Pentium-pro machines and other hardwares to all the ROCs. Software such as Name approval, New Company Registration, Receipt & Online Diarising of Documents (Cash Counter), Inward Diary for other Correspondence, Recording Registered Documents and Pay Roll are in operation in all ROCs. The Electronic mail facility is also

extensively being used in all ROCs. Additional softwares are being used selectively by different ROCs. Apart from ongoing upgradation of hardware at ROCs during 1998-99, new computer centres have been set up and are operational at the offices of ROC, Delhi (Jawahar Lal Nehru Stadium), ROC Pune, and ROC Jammu and Kashmir with implementation of software.

8.4.3 A Business Process Re-engineering Study has been conducted at ROC offices by NIC study team to re-engineer the processes, recommend appropriate enabling technologies fitting the re-engineered processes, working out requirement of software, hardware networking and work flow layout and infrastructure development to implement the solutions, to provide a phased plan and schedule for transition from existing processes to the re-engineered processes.

8.4.4 A five year Information Technology Plan has been prepared with the objective of achieving, effective public services viz. information on status of applications, procedures, notifications etc. and redressal of public grievances, protection of investors, effective regulation of the functioning of companies and simplification of the procedures. The Plan broadly covers review of modernisation and computerisation efforts made in the direction of IT implementation.

8.4.5 The focus of the plan is to meet the requirements of DCA at Shastri Bhawan, New Delhi. Potential application areas such as public interface services, file tracking system, personnel information system, record management system, public grievances monitoring system and networking services are planned to be implemented/further strengthened at the headquarters. However the plan also covers each constituent office of the Department (Registrar of Companies, Regional Directors, Official Liquidators, Monopolies and Restrictive Trade Practices Commission, Director General (Investigation and Registration) Company Law Board Bench offices) to be networked to the department headquarters which will enable setting up of DCA intranet and website at the Department of Company Affairs headquarters. Apart from internal connectivity, it also envisages to allow connectivity of headquarters with other concerned agencies such as SEBI, Courts, RBI, CSO, Institute of Company Secretaries, Institute of Chartered Accountants, Institute of Costs and Works Accountants, Large size companies, permitting increasing exchange of information

between the Department and these agencies through computer network.

8.4.6 Local Area Network (LAN) has been set up at the Department with e-mail and internet browsing facilities made available to the officers. Other components of IT implementation are being pursued as envisaged in the plan.

Facilitation Counter

8.5.1 A computerized information and Facilitation Counter functions at Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi on behalf of the Department of Company Affairs for the convenience of the general public for obtaining information regarding schemes, procedures, forms, applications and status of the individual complaints, etc. Information in relation to the investors grievances, status of loan and investment applications, managerial remuneration applications, appointment of auditors and miscellaneous applications being dealt with by the Department of Company Affairs are made available at the Facilitation Counter. Individuals who wish to personally handover any grievance/complaint or any other application on any matter relating to the Department, may do so at the Facilitation Counter during the office hours. Computerized acknowledgement receipt in respect of each such application is given which serves as a reference for future communication in this regard. During 1.4.98-31.12.98, 1226 persons approached the counter with various types of complaints.

Publications

8.6.1 The Department brought out the following publications during the year :

(a) Annual Report on Working and Administration of Companies Act, 1956

Annual Report on the Working and Administration of the Companies Act, 1956 is

required to be laid before both Houses of Parliament in pursuance of the provisions of Section 638 of the Companies Act, 1956. The 41st Report for the year ended March 97 was placed in Lok Sabha on 8-6-98 and Rajya Sabha on 9-6-98. The 42nd Report for the year ended March, 1998 was placed before both the Houses of Parliament, Lok Sabha on 14.12.98 and Rajya Sabha on 15.12.98.

(b) Annual Report on the Working and Administration of the Monopolies and Restrictive Trade Practices Act, 1969

Annual Report on the Working and Administration of the Monopolies and Restrictive Trade Practices Act, 1969 is required to be laid before both Houses of Parliament in pursuance of the provisions of Section 62 of the Act. The 26th Report pertaining to the provisions of the MRTTP Act, 1969 was laid in the Lok Sabha on 1.6.98 and in the Rajya Sabha on 2.6.98. The 27th Report was laid in the Lok Sabha on 3.8.98 and in the Rajya Sabha on 4.8.98.

8.6.2 The Research and Statistics Division of the Department also brings out a monthly journal entitled Company News and Notes publishing certain data on approvals given under the Companies Act and orders issued under the MRTTP Act, besides information on new company registrations and articles on corporate matters.

Budget Provisions and Actuals

8.7.1 Table 8.2 shows the budget provisions and actual expenditure incurred in respect of the Department of Company Affairs and its various field offices for the years 1997-98 and 1998-99 (April-December, 1998) and the fees realised under the Companies Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969 during the period.

Table 8.2

(Rs. in Crores)

Sl.No.	Year	Budget Provision	Actual expenditure	Fee realised under Companies Act and MRTTP Act
1	2	3	4	5
1.	1997-98	26.01	22.09	154.21
2.	1998-99 (Upto December 98)	33.02	20.53	116.43