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**STANDING COMMITTEE ON FINANCE
(2017-18)**

SIXTEENTH LOK SABHA

MINISTRY OF CORPORATE AFFAIRS

**DEMANDS FOR GRANTS
(2018-19)**

FIFTY-NINTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 2018 / Phalguna, 1939 (Saka)

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(2017-2018)

(SIXTEENTH LOK SABHA)

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DEMANDS FOR GRANTS
(2018-19)

Presented to Lok Sabha on 09 March 2018

Laid in Rajya Sabha on 09 March 2018

LOK SABHA SECRETARIAT
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COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2017-18

Dr. M. Veerappa Moily - Chairperson

MEMBERS

LOK SABHA

2. Kunwar Pushpendra Singh Chandel
3. Shri Bandaru Dattatreya
4. Shri Nishikant Dubey
5. Shri Venkatesh Babu T.G.
6. Shri P.C. Gaddigoudar
7. Shri C. Gopalakrishnan
8. Shri Shyama Charan Gupta
9. Shri Rattan Lal Kataria
10. Shri Chandrakant B. Khaire
11. Shri Bhartruhari Mahtab
12. Shri Prem Das Rai
13. Shri Rayapati Sambasiva Rao
14. Prof. Saugata Roy
15. Shri Rajiv Pratap Rudy
16. Shri Jyotiraditya M. Scindia
17. Shri Gopal Shetty
18. Dr. Kiritbhai P. Solanki
19. Dr. Kirit Somaiya
20. Shri Dinesh Trivedi
21. Shri Shivkumar Udasi

RAJYA SABHA

22. Shri Naresh Agrawal
23. Shri Rajeev Chandrasekhar
24. Shri A. Navaneethakrishnan
25. Shri Mahesh Poddar
26. Dr. Mahendra Prasad
27. Shri C.M. Ramesh
28. Shri T.K. Rangarajan
29. Shri Ajay Sancheti
30. Shri Digvijaya Singh
31. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi | - | Joint Secretary |
| 2. | Shri Rajesh Ranjan Kumar | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora | - | Deputy Secretary |

INTRODUCTION

I, the Chairperson of the Committee on Finance, having been authorised by the Committee, present this Fifty-Ninth Report (Sixteenth Lok Sabha) on 'Demands for Grants (2018-19)' of the Ministry of Corporate Affairs.

2. The Demands for Grants (2018-19) of the Ministry of Corporate Affairs were laid on the Table of the House on 8 February, 2018 under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee took oral evidence of the representatives of the Ministry of Corporate Affairs on 16 February, 2018. The Committee wish to express their thanks to the representatives of the Ministry of Corporate Affairs for appearing before the Committee and furnishing the material and information which the Committee desired in connection with the examination of the Demands for Grants (2018-19).

4. The Committee considered and adopted this Report at their Sitting held on 08 March, 2018.

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

New Delhi;
09 March, 2018
18 Phalguna, 1939 (Saka)

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

REPORT

I. INTRODUCTORY

1. The mandate of the Ministry of Corporate Affairs, *inter alia*, includes the administration of a wide range of statutes, as given below for the regulation of the corporate sector:

- (i) The Societies Registration Act, 1860 and Indian Partnership Act, 1932
(in centrally administered areas)
- (ii) The Chartered Accountants Act, 1949
- (iii) The Companies (Donations to National Funds) Act, 1951
- (iv) The Companies Act, 1956
- (v) The Cost and Works Accountants Act, 1959
- (vi) The Company Secretaries Act, 1980
- (vii) The Competition Act, 2002 as amended by Competition (Amendment) Act, 2009
- (viii) The Limited Liability Partnership (LLP) Act, 2008
- (ix) The Companies Act, 2013
- (x) The Insolvency & Bankruptcy Code, 2016

II. FUNCTIONS

2. The main responsibilities of the Ministry are as follows:

- (i) Administration of the notified provisions of Companies Act, 2013 and those provisions of Companies Act, 1956 that are still in force.
- (ii) Notification of remaining sections of Companies Act 2013.
- (iii) Formulation of Rules and regulations under various Acts administered by the Ministry.
- (iv) Convergence of Indian Accounting Standards with International Financial Reporting Standards (IFRS).
- (v) Implementation of Competition Act through the Competition Commission of India (CCI).
- (vi) Implementation of e-Governance in MCA.
- (vii) Building systems for early detection of irregularities in corporate functioning.
- (viii) Conducting investor education and awareness programmes.
- (ix) Investigation of serious frauds through the Serious Fraud Investigation Office (SFIO).
- (x) Management of the cadre of Indian Corporate Law Service (ICLS).
- (xi) Administrative support to attached organisations, namely, IICA, SFIO, CCI,

III. IMPORTANT POLICY DEVELOPMENT

The Companies Act, 2013

3. The Companies Act, 2013, notified on 30th August 2013, provides the corporate sector an opportunity for self-regulation, while mandating greater transparency and enhanced disclosures for improved compliance. The Companies Act, 2013 had 470 sections. Of these, 39 sections relating to revival and rehabilitation of companies and winding up were omitted by the Insolvency & Bankruptcy Code, 2016. Of the remaining 431 sections, 429 sections have been notified alongwith relevant rules. The remaining 2 sections which are yet to be notified relate to (i) Constitution of National Financial Reporting Authority (NFRA) (section 132), and (ii) Repeal & Transition (section 465). These are at various levels of examination and would be notified in due course.

The Companies (Amendment) Bill, 2016

4. Subsequent to the amendments carried out in May 2015, further amendments have been proposed to Companies Act, 2013. On the basis of the recommendations made by Companies Law Committee 2015 (CLC-2015), which submitted its report on 1st February 2016, and comments received during public exposure of the CLC report, the Ministry has proposed changes in the Companies Act, 2013 and has introduced Companies (Amendment) Bill, 2016 in Lok Sabha on 16th March, 2016. The Companies (Amendment) Bill, 2016 was referred to the Parliamentary Standing Committee on Finance, which after examination, presented its report to both Houses of the Parliament on 7th December, 2016. Based on the said report, official amendments to the Bill were moved in the Lok Sabha. The said Bill alongwith official amendments was passed on 27th July, 2017 in Lok Sabha and on 19th December, 2017 in Rajya Sabha. The Hon'ble President has given his assent on 3rd January, 2018.

Insolvency and Bankruptcy Code, 2016

5. The Insolvency and Bankruptcy Code, 2016 (IBC, or the Code) was published in the Official Gazette on 28th May, 2016. Government of India (Allocation of Business) Rules, 1961 were amended and notified on 1st August, 2016 wherein MCA was entrusted with the responsibility to administer the Code. The Code has been framed with the object to consolidate and amend the laws

relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner.

IBC Amendment Ordinance and the replacement Bill

6. Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 was promulgated vide notification dated 23rd November, 2017 to amend the Code in order to further strengthen the insolvency resolution process by prohibiting certain persons from submitting a resolution plan who, on account of their antecedents, may adversely impact the credibility of the processes under the Code. The Ordinance also makes provisions to specify certain additional requirements for submission and consideration of the resolution plan before its approval by Committee of Creditors.

7. The Replacement Bill for the Ordinance, namely the Insolvency and Bankruptcy Code (Amendment) Bill, 2018 which further amended the provisions relating to prohibition on certain persons to provide more clarity, has been passed by both Houses of the Parliament. The assent of the President is awaited.

Insolvency Law Committee

8. Ministry has constituted Insolvency Law Committee (ILC) vide order dated 16th November, 2017 to: (i) take stock of functioning and implementation of the Code; (ii) identify the issues that may impact the efficiency of the corporate insolvency resolution and liquidation framework prescribed under the Code, and, make suitable recommendations to: (i) address such issues, and, (ii) enhance efficiency of the processes prescribed and for effective implementation of the Code.

9. The First Meeting of ILC was held on 8th December, 2017 at New Delhi, wherein the members were requested to hold deliberations/discussions with stakeholders before the next meeting. Public comments have also been invited in relation to working of IBC, 2016 pursuant to the said meeting.

Insolvency and Bankruptcy Board of India

10. The Insolvency and Bankruptcy Board of India (IBBI) was established vide Gazette notification dated 1st October, 2016 under the IBC. The Chairperson of the Board was appointed vide gazette Notification dated 1st October, 2016. Four ex-officio members of the Board have also been appointed vide Gazette Notification dated 1st October, 2016. The IBBI has the mandate for regulation of insolvency

professionals, insolvency professional agencies and information utilities besides exercising other powers and functions as envisaged under the Code.

11. IBBI has issued notifications regarding (i) IBBI (Voluntary Liquidation Process) Regulations, 2016; (ii) IBBI (Information Utilities) Regulations, 2017; (iii) IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017; and (iv) IBBI Companies (Registered Valuers and Valuation) Rules, 2017, to improve the regulatory environment.

Special Courts

12. Sections 435 to 440 of the Companies Act, 2013 which prescribe provisions related to “Special Court” came into effect from 18th May, 2016. Section 435 provides that, the Central Government may, for the purpose of providing speedy trial of serious offences, i.e., those offences carrying punishments of imprisonment of two years or more (which means serious offences) under the Act, establish or designate as many Special Courts as may be necessary. A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working. A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

National Company Law Tribunal

13. The National Company Law Tribunal (NCLT) was constituted under Section 408 of the Companies Act, 2013 vide notification No. S.O.1932 (E) dated 1st June, 2016. The Ministry has set up eleven Benches, one Principal Bench at New Delhi and one Regional Bench each at New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. The NCLT is a quasi-judicial body to adjudicate the disputes pertaining to the companies registered in India, and is a successor to the Company Law Board.

National Company Law Appellate Tribunal

14. The National Company Law Appellate Tribunal (NCLAT) has been set up under Section 410 of the Companies Act, 2013 vide notification No. 1933(E) dated 1st June, 2016 to deal with the appeals arising out of the orders of the NCLT.

NCLAT is the Appellate Tribunal for hearing appeals against the orders passed by NCLT under Sections 61, 202 and 211 of the IBC, 2016. NCLAT is also the Appellate Tribunal to hear and dispose off appeals against any direction issued or decision made by the CCI as per amendment brought to Section 410 of the Companies Act, 2013 with effect from 26th May, 2017.

Investor Education and Protection Fund Authority

15. The Investor Education and Protection Fund Authority (IEPFA) has been set up under Section 125 (5) of the Companies Act, 2013 vide notification No.854 (E) dated 5th September, 2016 with the objective of making refund of unpaid amounts to eligible stakeholders and promote investor education, awareness and protection.

Official Liquidators

16. Official Liquidators (OLs) are officers appointed by the Central Government under Section 359 of the Companies Act, 2013 (corresponding to Section 448 of Companies Act, 1956) and are attached to jurisdictional High Courts. The provisions of the section and other provisions of winding up under Companies Act, 2013 came into force w.e.f. 15th December, 2016. The respective RDs exercise administrative control of OL offices on behalf of the Central Government. OLs function under the directions and supervision of the High Courts in the conduct of winding up of affairs of the companies.

17. With the enactment and commencement of provisions of corporate insolvency under the IBC, 2016 and consequent amendment of certain provisions relating to winding up in the Companies Act, 2013 and notifications of rules for transfer of pending proceedings relating to winding up from the High Courts to the NCLT, w.e.f. 1st December, 2016, the OLs would no longer be entrusted with fresh matters or pending proceedings transferred from High Courts to NCLT for winding up of a company on the ground of 'inability to pay debts'. Such cases have to be dealt with for Insolvency Resolution under Section 7,8 or 9 of the IBC, 2016 and in case of failure of insolvency resolution process, liquidation will be undertaken by insolvency professionals approved by NCLT.

18. Performance of OLs is reviewed by MCA periodically. Latest review was taken on 10-11 November, 2017 at New Delhi. Targets for the next two quarters were also delineated for all offices of OLs.

IV. BUDGETARY ALLOCATIONS AND UTILISATION

19. Demand No. 17 pertaining to the Ministry of Corporate Affairs for the year 2018-19 amounts to Rs. 564.15 crore, out of which Rs. 537.65 crore is under Revenue Head and Rs. 26.50 crore is under Capital Head. The entire allocation is voted.

20. A summary of Demands for Grants of the Ministry of Corporate Affairs for the last three years – Plan & Non-Plan is as under:-

(₹ in crore)

Year	Budget Estimates			Revised Estimates			Actual Expenditure			Surrender		
	Plan	Non-Plan	Total	Plan	Non-Plan	Total	Plan	Non-Plan	Total	Plan	Non-Plan	Total
2014-15	24.00	231.25	255.25	23.00	228.92	251.92	17.93	208.31	226.24	6.07	18.89	25.59
2015-16	24.00	247.88	271.88	20.00	391.53	411.53	19.55	384.84	404.39	6.55	3.98	10.53
2016-17	20.00	324.43	344.43	15.00	399.58	414.58	14.98	382.29	397.27	0.015	12.405	12.42

(₹ in crore)

Year	Budget Estimates			Revised Estimates			Actual Expenditure (as on 29.01.2018)		
	Capital	Revenue	Total	Capital	Revenue	Total	Capital	Revenue	Total
2017-18	29.50	418.54	448.04	29.00	491.84	520.84	21.53	315.62	337.15
2018-19	26.50	537.65	564.15						

21. The grants of the Ministry of Corporate Affairs in Demand No.17 provides for expenditure on the Secretariat of the Ministry of Corporate Affairs. This includes seven offices of Regional Directors, Sixteen offices of Registrar of Companies (ROCs), nine offices of Registrar of Companies-cum-Official Liquidators (ROC-cum-OLs), fourteen offices of Official Liquidators (OLs), three attached offices viz. Serious Fraud Investigation Office, National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and Investor Education & Protection Fund (IEPF) Authority Grants-in-aid-General/Grants for Creation of Capital Assets/Grants-in-aid-Salaries for the Competition Commission of India (CCI), Grants-in-aid-General/Grants-in-aid-Salaries for Indian Institute of Corporate Affairs(IICA) and Grants-in-aid-General/Grants-in-aid-Salaries of Insolvency and Bankruptcy Board of India(IBBI). New institutional structures consisting of the National Financial Reporting Authority (NFRA) and the Special Courts and have to be set up in pursuance of the Companies Act, 2013. As regards, for setting-up of National Financial Reporting Appellate Authority (NFRAA), the same will not be established as per the recommendations of Parliamentary Standing Committee on Finance and acceptance thereof by Hon'ble Minister of Corporate Affairs.

22. From Financial Year 2017-18, classification of Government Expenditure as Plan and Non-Plan has been done away with and that the Government

Expenditure shall be classified under “Capital” and “Revenue” Heads

V. ISSUES RELATED TO MINISTRY OF CORPORATE AFFAIRS

A. Corporate Data Management (CDM) System

23. Ministry of Corporate Affairs (MCA) is implementing a scheme ‘Corporate Data Management’ that envisages to create in-house data mining and analytics facility with the objective of disseminating corporate sector data in a structured manner. The Corporate Data portal has been developed and launched by Hon’ble Finance Minister on 19th of January 2018. In brief, following broad activities have been undertaken under CDM:

- (i) Setup of in-house DW-BI capability and engagement of trained professionals (TSG) through NISG,
- (ii) Engagement of IICA for capacity building programmes for MCA officials, etc.
- (iii) Proof of Concept (PoC) of CDM data warehouse & business intelligence system has been developed on randomly selected 4000 companies.
- (iv) Extract, Transfer and Load (ETL) of annual statutory filings (financial filings) made by companies since year 2006 till September 2017 from MCA21 system to CDM system has been completed.
- (v) CDM system is ready for generating reports on Key Performance Indicators (KPIs) of companies, both in time series and cross section. The system is capable of generating panel data also.
- (vi) CDM system is ready for generating reports on non-financial indicators of companies such as master data information, director’s details, auditor’s details, shareholding pattern, subsidiary details, indebtedness, etc.
- (vii) PoC and beta release of compliance monitoring system with data upto March 2017 for facilitating administration & regulation of companies by MCA officials has also been developed.
- (viii) Several capacity building programmes for MCA officials have been conducted.

Fund allocation and utilization under ‘Corporate Data Management (CDM)’ Scheme of the Ministry of Corporate Affairs is given as under:

(Rs. in lakh)

Component	2015-16			2016-17			2017-18			2018-19
	BE	RE	AE	BE	RE	AE	BE	RE	AE	BE
Revenue Section – Corporate Data Management	400	400	176#	800	268	267	400	350	276.8*	675

Capital Section- Data Mining System	100	100	279#	200	232	231	150	100	4.9*	270
Total	500	500	455	1000	500	498	550	450	269.20*	945

Under the third supplementary demand an amount of 185 lakh and 315 lakh were granted under revenue and capital head respectively.

*31st Jan 2018

24. CDM system provides forward linkage to MCA21 and using the DW/BI and data mining & analytics which has enabled thorough exploration of the electronic data available with MCA21, which was till now not possible. Some of the functionalities are:

- (i) historical information and data linkages,
- (ii) statistical and economic analysis,
- (iii) data driven decision making,
- (iv) regulating compliances,
- (v) More reliable data, etc

25. Training on usage of CDM system has already been conducted for Ministry officials posted at HQ as well as RoCs.

B. Serious Fraud Investigation Office (SFIO)

26. Serious Fraud Investigation Office(SFIO) was set up through a Government resolution dated 2nd July, 2003 and has now been given statutory status. It is a multi-disciplinary Investigating Agency, wherein experts from diverse fields like banking, capital markets, corporate law, forensic audit, taxation, information technology work together to unravel corporate frauds. It is headed by a Director, in the rank of Joint Secretary to the Government of India. The Director is assisted by Additional Directors, Joint Directors, Deputy Directors, Senior Assistant Directors, Assistant Directors, Prosecutors and other secretarial staff. The Headquarter of SFIO is at New Delhi, with five Regional Offices at Mumbai, New Delhi, Chennai, Hyderabad and Kolkata. The new Recruitment Rules for SFIO are being notified, paving the way for creation of a permanent cadre over a period of time.

27. When asked about the number of cases taken up *suo-moto* or on reference by Ministry by SFIO during the last three years, the Ministry in a written reply stated as under:

"SFIO cannot take up cases for investigation suo-motu. Cases are assigned by Central Government, as per provisions of section 212 of Companies Act,2013,where Government is of the opinion that it is necessary to investigate into the affairs of a company by SFIO:-

- 1) On receipt of a report of the Registrar or inspector under section 208 of the Companies Act, 2013;
- 2) On intimation of a special resolution passed by a company that its affairs are required to be investigated;
- 3) In the public interest; or
- 4) On request from any department of the Central Government or a State Government. "

28. Details of cases referred to be investigated by SFIO and cases where investigation have already been completed during the last three years and the current year is as follows:

Year	Investigation cases assigned	Investigation cases completed
2014-15	10 cases (71 companies)	06 cases (39 companies)
2015-16	22 cases (184 companies)	10 cases (60 companies)
2016-17	26 cases (111 companies)	16 cases (87 companies)
2017-18 (till 31-01-18)	15 cases (81 companies)	03 cases (118 companies)
Total	73 cases (447 companies)	31 cases (304 companies)

As on 31.1.2018, investigation is under progress in 48 cases involving 225 companies including 04 cases where investigation has been stayed by the Hon'ble Courts.

On the directions of a Task Force on Shell Companies, co-chaired by Revenue Secretary and Secretary, Corporate Affairs, a database of shell companies was to be created by calling information from Income Tax Department, Enforcement Directorate, Central Bureau of Investigation, State Governments, SFIO, etc. As per the information shared by these agencies, a database of 16966 companies identified as '**confirmed shell companies**' was created. Further, based on the details of confirmed shell companies, the MCA21 database, particularly directorships, was processed and another database of 16,950 companies was created as '**derived list of suspected shell companies**'. Besides, the Ministry/ SFIO also developed a set of rules based on various financial parameters to identify suspected shell companies. Based on such rules, red flags were generated and around 80,592 companies were identified as '**suspected shell companies**'. The database of all the categories mentioned above, i.e., confirmed shell companies, derived list of suspected shell companies and suspected shell companies based on the rules developed, has been shared with SEBI, FIU, CDBT, ED and CBI."

Early Warning System:

29. On the query of number of cases generated from internal early warning system, the Ministry in a written reply stated that apart from the above, elementary early warning system, the Ministry embarked upon a full-scale 'early warning system' project with comprehensive Artificial Intelligence framework. A Detailed Project Report to establish Early Warning System was assessed by the Delegated Investment Board under the Chairmanship of Secretary, Corporate Affairs with an estimated cost of Rs 123.68 crore and the same was approved by the Hon'ble

Minister of State in June, 2017. Thereafter, 'Request for Proposal' for selection of 'Managed Service Provider' was issued. A Technical Evaluation Committee (TEC), set up to evaluate the bids, found all the bids as technical qualified. However, after opening the Financial Bids, it was observed that the lowest bid was around 100 per cent more than the initial estimated project cost. Accordingly, it is proposed that the project needs re-consideration with regard to the scale of computerization as well as infrastructure and manpower requirement.

30. In addition to above, a Market Research and Analysis Unit (MRAU) was set up in SFIO in 2009 with the following objectives:

- i. To act as Repository of information
- ii. For improving investigation skills
- iii. For providing inputs for adopting best international practices
- iv. For co-ordination with other investigating agencies etc.

31. MRAU has submitted 29 Research Reports involving fraudulent activities by various Corporate entities during the last two financial years and the current year (till date). The Government, on the basis of these Reports, has assigned investigations into the affairs of 18 companies to SFIO.

32. When asked about the average time taken for investigation and filing of charge-sheet, the Ministry in a written reply stated as under:

"The average time taken for completion of investigation and submitting of investigation report during the last three years is as under:

Year	Investigation cases completed	Avg. completion time (in months)
2014-15	06 cases (39 companies)	18.7
2015-16	10 cases (60 companies)	18.1
2016-17	16 cases (87 companies)	17.3

Time taken for completing an investigation into the affairs of a company depends on various factors such as:

- (i) whether operations of the company are closed or continuing.
- (ii) whether key managerial persons are available, in judicial custody or absconding.
- (iii) whether records of the company are available or not.
- (iv) whether any other agency has already taken custody of the documents or not.
- (v) Number of companies in the group referred for investigation.
- (vi) Whether cases are assigned by the Ministry or the judicial authorities.

The average time taken for prosecution/conviction during the last three years and current year is as under:

Financial year	Average time taken successful Prosecution/ conviction (in Months)
2014-15	50.70

2015-16	35.77
2016-17	35.57
2017-18 (as on 01.02.2018)	61.94

Conclusion of a prosecution depends on the nature of offences committed, number of accused and witnesses. Further, compoundable offences are relatively less time-consuming, whereas, non-compoundable offences usually take longer time due to the high pendency in Judiciary."

33. On being asked about the percentage of cases successfully prosecuted and outcome thereof the Ministry furnished the following information:

The details of cases successfully prosecuted and outcome thereof are as under:

Financial year	Successful prosecution/ conviction	Acquittal	Dismissal on technical grounds	Total cases disposed off
2014-15	18	05	22	45
2015-16	09	29	06	44
2016-17	19	01	01	21
2017-18 (as on 31.1.18)	08	00	09	17
Total	54	35	38	127
The conviction/successful prosecution rate is 42.51% of the total cases disposed of.				

34. When asked about the steps taken to fill up the vacant posts in SFIO, the Ministry in a written reply stated as under:

"Ministry has taken concerted efforts to fill up vacancies in SFIO in close and active coordination with Department of Personnel & Training and UPSC. The details of the Categories of posts are as under:

Mode of Recruitment	Category of Posts	Number of Posts		
		Sanctioned	In-Position	Vacant
Encadred including the post of Director	10	16	13	03
Deputation	21	75	25	50
Direct Recruitment	07	42	29	13
Total	38	133	67	69

The recruitment to 42 posts of SFIO, out of total 133 sanctioned posts, is now exclusively through "Direct Recruitment (DR)". Presently, 29 such posts are filled up and 03 more candidates are expected to join shortly. The Ministry has requisitioned UPSC/SSC for filling up 10 more posts, where for recruitment process stands started. Besides this, out of 75 posts under Deputation (ISTC), total 25 are presently filled up, and 02 more candidates are expected to join shortly. The Ministry has already requisitioned UPSC for filling up 03 more deputation posts. Balance vacancies have been re-advertised or being re-advertised shortly. The posts in SFIO are highly technical in nature, many a time sufficient response is not received to the advertisements and same posts are required to be re-advertised again and again to get suitable candidates. The Department of Expenditure, Ministry of Finance has been approached for restoring 'investigation allowance'. The Ministry has also approved

engagement of experts as Consultants in various fields."

C. Registrar of Companies (ROCs)

35. Registrars of Companies (RoCs) are appointed under Section 396 of the Act. RoCs, other than Registrar CRC, continue to have jurisdiction over all the companies including companies incorporated by the Registrar, CRC, for all other provisions of the Act and the rules made thereunder, which may be relevant after incorporation. MCA exercises administrative control over these offices through respective RDs.

36. When asked about the number of Companies investigated by ROCs currently, number of cases successfully prosecuted by ROCs and pendency of cases at ROCs level, the Ministry furnished the following information:

"During the period of last three years including current year (till 31.12.2017), the Ministry has ordered Inspection of the books and papers of 379 Companies and Investigation into the affairs of 57 Companies have been ordered which were allotted to RDs/ROCs. So far 217 Inspection Reports and 05 Investigation Reports have been received by the Ministry. 162 number of Inspections are pending as on 31/12/2017.

(i) 52 number of companies are under process for Investigation with RDs/ROCs currently as on 31.12.2017.

(ii) In 18,003 number of cases, prosecutions have been filed during FY 2014-15 to 2017-18 (till 31.12.2017) and total 14,226 cases have been disposed of during said period.

Rs 8,45,25,530/- have been awarded as penalty.

Rs 8,45,29,925/- have been collected as compounding fees.

(iii) 49,433 number of cases are pending with ROCs as on 31/12/2017.

D. Investor Education and Protection Fund (IEPF) Authority

37. Government of India has on 7th September, 2016 established Investor Education and Protection Fund Authority under the provisions of section 125 of the Companies Act, 2013 with the objective to make refunds of shares, unclaimed dividends, matured deposits/debentures etc. transferred to IEPF and to promote investor education, awareness and protection. Section 124 (6) of Companies Act, 2013 requires that shares in respect of which dividend has not been paid or claimed for seven or more consecutive years or more shall be transferred by the company to IEPF Authority. For facilitating the transfer of shares, the Authority has opened two Demat accounts.

38. Transfers to IEPF: An amount of Rs.1989.76 crores have been credited till 11th January, 2018. 1227 companies have transferred about 43.9 crore shares in respect of about 29.4 lakh folios.

Investor Awareness activities

39. The IEPF Authority is mandated by the Companies Act, 2013 to promote investor education, awareness and protection. Towards this end the Authority/Ministry has taken various investor awareness initiatives through a media campaign and organizing Investor Awareness Programmes (IAPs). The IAPs are organized in rural areas through CSC e-Governance Services India Ltd., Ministry of Communications & IT (DeitY). In urban and semi urban areas the IAP's are conducted through Professional Institutes (PIs).The year wise details of the IAP's conducted are as under:

Year wise detail of Investor Education Programmes (IAPs) conducted

Year	Professional Institutes (PIs)	CSC e-governance	Total
2013-14	1849	20	1869
2014-15	1359	300	1659
2015-16	2019	925	2944
2016-17	1096	1075	2171
2017-18 (till 31.01.2018)	170	5519	5689
Total	6493	7839	14332

40. IEPF Authority has published advertisements in leading newspapers in various languages throughout India informing investors about the procedures for claim of unpaid/unclaimed dividends/matured deposits/matured bonds/shares which have been deposited by the companies to the IEPF. Four jingles on investor awareness are being aired on All India Radio FM and Vividh Bharti. Crawlers on investor awareness are run on Doordarshan News Channels and Regional Kendras.

41. The Indian Institute of Corporate Affairs will also conduct awareness programmes and research activities for the Authority. Fresh IEC materials are being developed by the Institute. A joint campaign for creating investor awareness has been planned in association with Reserve Bank of India, Securities and exchange Board of India and Department of Consumer Affairs. As part of this campaign activities co-branded jingles are run on All India Radio.

42. On being asked about the number of claims received, processed, refunded, disbursed to investors since 07.09.2016 and pendency thereof, the Ministry in a

written reply stated as under:

"The investors are required to file e form IEPF 5 for claiming their refund from IEPF. A copy of the filed form along with requisite documents is forwarded by the claimant to the company for verification of the claim and forwarding to IEPF Authority. The status of refund of claims received and processed by IEPF Authority is as under:

(As on 25th January, 2018)

No. of claims received by Authority since 7 th September, 2016	No. of claims in which amounts disbursed	No of claims rejected	No. of claims pending for rectifications by companies
642	85	178	379

The total amount of Rs.82,69,839/- (in 2016-17–Rs.47,44,679/- and in 2017-18–Rs.35,25,160/-) has been refunded as on date. The total number of claims filed till 25th January, 2018 as per data of e-form IEPF-5 available on MCA-21 portal is 1994. Remaining claims are pending for Verification Report from the Companies or Claimants have not forwarded to the Companies (follow up Mail sent to companies for early process of claims).

Details of the budget allocated and utilised during FY 2016-17 and 2017-18

Item	FY 2016-17		FY 2017-18 (till 31.01.2018)	
	Allocated	Utilized	Allocated	Utilized
Administrative and Establishment expenses	2,39,50,000	2,32,42,861	5,10,00,000	3,86,86,500
Other Charges	0	*3,23,85,000	**40,00,00,000	11,39,95,000

* Rs.3, 23, 85,000/- was augmented under the Object Head - Other Charges via re-appropriation.

** The amount of Rs.40.00crore was allocated under OH-other charges via first batch supplementary Demand for Grants 2017-18.

Detail of the Budget Allocation under Inter-Account Transfer is as under:

Item	FY 2016-17	FY 2017-18
	Allocated	Allocated
Inter account transfer	30,00,00,000	60,00,00,000

E. Competition Commission of India (CCI)

43. The Competition Commission of India (CCI) was established in March, 2009 under the Competition Act, 2002 for the administration, implementation and enforcement of the Act. The objectives of the CCI are:

- To prevent practices having adverse effect on competition;
- To promote and sustain competition in markets;
- To protect the interests of consumers; and
- To ensure freedom of trade.

44. CCI has power to regulate mergers or combinations, and to reverse mergers or combinations, if it is of the opinion that such mergers or combinations have, or is likely, to have an 'appreciable adverse effect' on competition in India.

45. When asked about the status of pending cases with CCI. cases decided by

CCI and reversed by the Appellate Tribunal, the Ministry in a written reply furnished the following information:-

(a) The total number of anti-trust cases pending with CCI (as on 31st January 2018) is 223. Out of these, 176 cases are pending for more than one year. Further, a total of 564 combination notices have been filed. There were only 15 notices pending (as on 31.01.2018) and none of these is more than one year old.

(b) Cases decided by the erstwhile Tribunal viz. the Competition Appellate Tribunal and the present Tribunal for hearing appeals from CCI orders viz. the National Company Law Appellate Tribunal (NCLAT) for the financial years 2014-15, 2015-16, 2016-17, and up to 31st January 2018 are detailed below:

Year	No. of orders passed by COMPAT/NCLAT			
	Disallowed (upholding Commissions Order)	Allowed (Setting Aside Commissions Orders)	Out of Appeals allowed remanded to Commission	Total
	A	B	C **	D= (A+B)
2014-15	45	06	02	51
2015-16	49	87	67	136
2016-17	47	69	19	116
2017-18*	23	04	0	27
Total	164	166	88	330

*up to 31-01-2018

** C is a subset of B. Thus out of 166 appeals allowed, only 78 matters were in favour of parties as 88 appeals were set aside.

46. On the issue of cases pertaining to unfair business practice such as charging of extra charges by airline companies for blocking/reservation of specific seats by CCI, the Ministry in a reply stated that in this regard, it may be noted that Section 4(2)(a)(ii) of the Competition Act, 2002 prohibits an enterprise from abusing its dominant position by imposing unfair or discriminatory price, directly or indirectly, in purchase or sale (including predatory price) of goods or services. Accordingly, CCI can initiate investigation under Section 4(2)(a)(ii) of the Act against a dominant enterprise in a relevant market if it imposes unfair or discriminatory price. Further, in terms of Section 3(3) of the Act, CCI can initiate investigation if enterprises operating at horizontal level directly or indirectly determine sale and purchase price of goods or services.

47. CCI has not taken up any case pertaining to charging of extra charges by airlines companies for blocking/ reservation of specific seats to the disadvantage of large number of passengers etc. However, there are four cases pertaining to the airline sector which have been handled by CCI. These primarily relate to concerted parallel pricing in airfares, fixing fuel surcharge for providing air cargo transport services and surge pricing.

F. National Company Law Tribunal (NCLT)

48. The constitution of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) have been notified on 1st June, 2016. These bodies have been constituted for faster resolution of corporate disputes and reducing the multiplicity of agencies thereby promoting 'ease of doing business' in the country. With the constitution of NCLT the Company Law Board (CLB) stands dissolved and cases pending with CLB were transferred to NCLT.

49. MCA has notified Insolvency and Bankruptcy Code, 2016 and SICA (Sick Industrial Companies Act) Repeal Act, 2003. With this, Board of Industrial and Financial Reconstruction (BIFR) and Appellate Authority for Industrial and Financial Reconstruction have been dissolved and Benches of NCLT have been designated to exercise the jurisdiction, powers and authority of Adjudicating Authority conferred by or under part II of the Insolvency and Bankruptcy Code, 2016. Vide notification No.G.S.R.119(E) dated 7th December, 2016, MCA has notified provision for transfer of proceedings relating to arbitration, compromise, arrangements and reconstruction to the benches of NCLT.

During the year, two Judicial Members have been appointed in NCLT and two Judicial Members were appointed in NCLAT. At present, there are 16 Members (Judicial) and 6 Members (Technical) in NCLT and 1 Member (Technical) and 2 Members (Judicial) in NCLAT. Notification has been issued revising the jurisdiction of benches of NCLT in February, 2017 thereby allocating the jurisdiction of State of Haryana with the Chandigarh bench of NCLT.

50. On being asked about the number of cases transferred to and disposed of by NCLT since 2016, pendency of cases, cases which are delayed by/held up due to appellate courts, High Courts and Supreme Court, the Ministry in a written reply furnish the following information:

No. of cases received from Company Law Board (CLB): **5345**

No. of cases since transferred to NCLT (received on transfer from High Courts) upto 31.12.2017:

Mergers & Amalgamations(M&A)	Insolvency and Bankruptcy Code(IBC)	Others	Total
1519	2309	6	3834

Fresh filed upto 31.12.2017:

M&A	IBC	Others	Total
3536	2838	7033	13407

No. of cases disposed of by NCLT since 1.6.2016 upto 31.12.2017:

M&A	IBC	Others	Total
3483	2940	7706	14129

Pendency as on 31.12.2017:

M&A	IBC	Others	Total
1572	2207	4678	8457

G. Definition of Shell Companies

51. On being asked as to how the Shell Companies are being identified and action taken against them in the absence of well laid definition of 'Shell Company' in the Companies Act 2013, the Ministry in a written stated that the term "Shell Company" is not defined under the Companies Act, 2013. OCED Glossary of Foreign Direct Investments Terms and Definitions available on OECD website defines a Shell Company as *"A Shell Company is a company that is formally registered, incorporated, or otherwise legally organized in an economy but which does not conduct any operations in that economy other than in a pass-through capacity. Shells tend to be conduits or holding companies and are generally included in the description of Special Purpose Entities."*

52. However, based on inputs received from various enforcement agencies/members of the Task Force co-chaired by Revenue Secretary and Secretary, MCA, following attributes/parameters are under consideration to identify any company as Shell Company:

- (i) Nil or negligible income
- (ii) Nil or negligible sales/purchases;/stock in trade
- (iii) Nil/Negligible expenditure on salary or personnel expenses but high bank charges ;
- (iv) Nominal share capital but high share premium ;
- (v) High Unsecured loans ;
- (vi) High non- current investments in shares of other companies;
- (vii) Negligible fixed asses [true value of assets , real estate is often suppressed]
- (viii) Common persons as promoters/directors
- (ix) Nominee/dummy directors/ directors of low means;
- (x) Majority shares of a company held by other companies , including by other shell companies;

- (xi) No economic rationale in bank transactions;
 - (xii) Multiple companies at the same address
 - (xiii) Generally no physical existence at the given address;
 - (xiv) High ticket transactions inconsistent with the business of the company ;
 - (xv) Rotational transactions with no apparent legitimate business purpose;
 - (xvi) Lack of beneficial ownership;
 - (xvii) Special purpose entity to facilitate cross border currency and asset transfer;
- and
- (xviii) Transfer to large sums to related entities

53. Further, Section 248 of the Companies Act, 2013 provides that the Registrar of Companies (ROC) may initiate the process of striking off a company, if he has reasonable cause to believe that a company is not carrying on any business or operation for a period two immediate preceding financial years and has not made any application within such period for obtaining the status of dormant company under Section 455 of the Act.

When asked as to whether the cases of companies which have been booked under Section 248 of the Companies Act 2013 will stand judicial scrutiny, the Ministry of Corporate Affairs in the post evidence reply has stated that however, presently there is no need to amend the Companies Act to provide for definition of Shell Company. The cases of companies struck off under Section 248 of the Act have also withstood judicial scrutiny. Action under Section 248 of the Companies Act, 2013 has been taken as per provisions of the Section 248(1) and the process as per Rules has been followed after given opportunity to the companies and their directors. Basically, when a company fails to file financial statements or annual report for two immediately preceding financial years and does not opt for dormant status, the RoC is reasonably satisfied that the company is not carrying on any business, he shall, after following due process de-register such company. In addition, the Government has brought out a Condonation of Delay Schemes (CoDS) facilitating disqualified directors to rectify their default under section 164 of the Act and restore their director status. However, this facility is not open to directors of struck off companies unless such company is revived under section 252 through an order of National Company Law Tribunal (NCLT).

Any person aggrieved by the action of the Registrar can approach the NCLT for revival within the meaning and circumstances falling under Section 252 of the Act. The company can be revived only after passing of the orders by the Hon'ble NCLT for revival.

54. Accordingly, ROCs had identified 2.97 lakh companies which were defaulting in filling of financial statements or annual returns for two or more continuous years and, prima-facie, were not in operation. Consequently, 2.26 lakh companies were struck off by following due process and after issuing Show cause to the companies and their directors. Further, there is a Task Force co-chaired by Secretary, Department of Revenue and Secretary, MCA. In its last meeting, it was decided to attempt a commonly accepted definition and attributes of Shell Companies by taking inputs from all Members. The inputs have been received and a draft brief note with inputs shall be placed before the members of Task Force. Presently, it is not felt to amend the Companies Act to provide for definition of Shell Company. The cases of companies struck off under section 248 of the Act are standing the legal scrutiny as of now.

55. In addition to the above, this Ministry has ordered investigation against 68 companies (which have deposited Rs. 25 cr. or more) u/s 216 read with 210 (1) (c) of the Companies Act, 2013 for huge sums deposited in Bank accounts and withdrawn in an exceptional manner post demonetization. The investigations are underway.

56. Regarding sharing of real time data amongst different agencies of the Government on Shell Companies the Ministry in a written reply stated that presently, the Task Force is co-chaired by Revenue Secretary and Secretary, MCA. The other Enforcement Agencies namely CBI, ED, DRI, CBDT, SFIO, DFS, CBEC, FIU and SEBI are its Members. The scope of Task Force is proposed to be broadened as the Steering Committee headed by Cabinet Secretary. For this the concerned Administrative Ministries for above Enforcement Agencies have been asked to offer their views.

H. Corporate Social Responsibility (CSR) Activities

57. Section 135 of the Companies Act 2013, requires every company above the specified thresholds of turnover, or net worth, or net profit, to spend at least two per cent of the average net profits earned during three immediately preceding

financial years, on Corporate Social Responsibility (CSR). Section 135 of the Companies Act, 2013, the Rules made thereunder, and Schedule VII of the Act read with General Circulars dated 18th June, 2014 and 12th January, 2016 issued by the Ministry of Corporate Affairs, give the broad contour within which the Board of the eligible companies have been empowered to formulate their CSR policies and take decision with respect to allocation of CSR funds across various development sectors.

Second proviso to section 135(5) of the Act, states

“.....if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount”

58. As per second proviso to section 135 (5) of the Act, **the Board of a company shall give reasons for not spending the prescribed CSR funds and still be compliant to the law.**

59. As per the data obtained from filings made by companies upto 30.11.2017 in the MCA21 registry for the years 2014-15, 2015-16 and 2016-17 the details on CSR is as summarized in the Table below.

CSR details for the years 2014-15, 2015-16 and 2016-17

Particulars	FY 2014-15	FY 2015-16	FY 2016-17
No. of Companies reported for CSR	14944	19184	6286
No. of Companies which have zero CSR expenditure	8833	9219	346
No. of Companies which have reported any CSR Expenditure	6111	9965	5940
Total CSR expenditure (amount in crore)	Rs. 9564.77	Rs. 13827.86	Rs. 4719.00

Note: - The above figures are based on the CSR Data Portal as on 07.02.2018.

60. When asked about the reasons for non-compliance of obligations under CSR by some companies, the Ministry in a written reply stated that the reasons disclosed by companies in e-forms for not being able to spend the minimum 2 percent of profits on CSR includes inter-alia the following:

1. Inability of company to formulate a well-conceived CSR Policy
2. Adoption of long gestation CSR programmes/projects
3. Suitable implementing agencies not found
4. Non-receipt of utilisation certificate from implementing agencies
5. Delay in formation of CSR committee
6. Delay in implementation of plan

7. Restructuring of CSR Policies etc.
8. Budget advanced to NGO's but not spent
9. Delay in project identification
10. Lack of prior expertise
11. Delay in capacity building
12. Others

61. On the issue of proactive steps taken by the Ministry to persuade companies for CSR compliance, the Ministry in a written reply stated that to ensure transparency and accountability on details of CSR funds, Ministry has launched National CSR Data Portal in public domain under www.csr.gov.in displaying disclosures made by companies in MCA21 registry.

62. Data asymmetry with respect to details of CSR disclosure by companies was a challenge for stakeholders and researchers at large. With the launch of this Portal, stakeholders will now have a snap shot of CSR activities carried out by companies which will help in generating pre-defined reports with respect to expenditure across states, districts, development sectors, etc. Also, the registered users can provide a feedback on projects of companies. In other words, the National CSR Data Portal will facilitate social audit of CSR projects, besides bringing together CSR contributors, implementers and beneficiaries and aligning CSR activities with national development goals.

63. Workshops for sensitization on the provisions of CSR including penal action to be taken have been conducted for officers of Regional Director / Registrar of Companies officers as well as for professionals.

Regarding monitoring mechanism of CSR, the Ministry in a written reply stated that the Ministry monitors the compliance of the mandatory disclosures in the Board's Report under section 135 of the Act. Till date Ministry has received 431 Reports from the office of Regional Director(s)/Registrar of Companies for non-compliance of section 135 r/w section 134 (3) (o) of the Act. Thereafter, based on the reports submitted by the Regional Director(s)/ROCs, **Ministry has, as on date, accorded permission** for initiating penal action under section 134 (8) of the Act, against 199 companies for non-compliance of CSR provisions for the financial year 2014-15. Of this, till date concerned ROCs have filed prosecution for 108 companies and 29 companies have filed compounding application under section 441 (6) of the Act.

Action on remaining 62 companies are under process with ROCs.

64. On being asked as to why funds under CSR are not being used in local areas specially mining areas or near the factories, the Ministry of Corporate Affairs in their post evidence reply has inter alia stated that the Board of the company is responsible for approving the CSR policies, activities to be undertaken, allocation and utilization of funds, geographical areas to be covered and to implement a robust monitoring mechanism thereto in accordance with the provisions mentioned above. Implementation of CSR activities can be undertaken by the company itself or through a registered trust, society or section 8 company. Thus, it is responsibility and prerogative of the Board of the company to cater to the needs of the immediate local community who would be directly or indirectly impacted/affected by the operations of the companies in and around its operations. Under 'The Mine and Mineral Amendment Act, 2015' (MMDR Act, 2015) District Mineral Foundation (DMF) is established in any district which is affected by mining related operations. The Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015, prescribes the rate of contribution to DMF as follows;

- (i) 10% of royalty in respect of mining leases granted on or after 12.01.2015; and
- (ii) 30% of royalty in respect of mining leases granted before 12.01.2015.

PART II

Observations/Recommendations

1. The Committee note that the Budget Estimates of the Ministry of Corporate Affairs under Demand No. 17 for the year 2018-19 amounts to Rs 564.15 crore, out of which Rs 537.65 crore is under Revenue Head and Rs 26.50 crore is under Capital Head. While analyzing the Demands for Grants of the Ministry for the last three years, the Committee observe that though there is an increase in Budget Estimates for the year 2018-19 over the previous years, there has been a persistent shortfall of utilization of the budgeted funds for instance in 2014-15 actual expenditure was 226.24 crore (Rs 25.39 crore surrendered) in 2015-16 actual expenditure was Rs 404.39 crore (Rs 10.53 crore surrendered) and in 2016-17 actual expenditure was Rs 397.27 crore (Rs 12.42 crore surrendered) and actual expenditure in the year 2017-18 (upto 29.01.2018) was only Rs 337.15 crore, as compared to RE of Rs 520.84 crore. This trend of under-utilization and consequential surrendering of budgeted funds year after year clearly depicts the Ministry's failure of not only projecting appropriate funds requirement but also their incapability to fully absorb the budgeted funds. The Committee are therefore constrained to reiterate their recommendation that it is high time the Ministry of Corporate Affairs exercises 'due diligence' in their budget formulation, taking a realistic and objective account of their functional needs, and ensure that scarce resources are not unduly blocked. In this connection, the Committee would expect the Ministry of Corporate Affairs to come to terms with their ever-increasing mandate and responsibility not only in the operation of the Companies Act but also other economic statutes like the Insolvency &

Bankruptcy code, Acts governing the professional bodies like the Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) etc. and related laws.

2. The Committee note that the Ministry of Corporate affairs is implementing a scheme 'Corporate Data Management' which envisages to create in-house data mining and analytics facility with the objective of disseminating corporate sector data in a structured manner. While analyzing the fund allocation and utilization under Corporate Data Management Scheme, the Committee are constrained to observe persistent shortfall in the utilization of funds allocated for the scheme in the years 2015-16, 2016-17 and 2017-18. For instance, in the year 2015-16 BE and RE for the scheme was Rs 5.00 crore and actual expenditure was Rs 4.55 crore. In the year 2016-17 BE was Rs 10.00 crore which was reduced to Rs 5.00 crore at RE stage, whereas actual expenditure was Rs. 4.98 crore. In the year, 2017-18 BE was Rs 5.50 crore and RE was reduced to Rs 4.50 crore, while the actual upto (31.01.2018) was only Rs 2.69 crore. The Committee thus express their displeasure that the Ministry was not able to fully absorb the funds allocated for an important scheme like Corporate Data Management, which defeats its very objectives. The Committee recommend that the Ministry with their mandate and responsibility of creating in house data mining and analytics facility should strive towards a system of more efficient utilisation of allocated funds so that objectives of the scheme could be fully achieved.

3. The Committee note that Serious Fraud Investigation Office (SFIO) is a statutory multi-disciplinary Investigating Agency working to unravel corporate frauds. Cases are assigned by Central Government as per

provisions of Section 212 of Companies Act, 2013, where Government is of the opinion that it is necessary to investigate into the affairs of a company by SFIO. The Committee note that over last four years i.e. from 2014-15 to 31st January 2018, 166 cases of investigation were assigned for investigation to SFIO, while only 65 cases have been resolved and completed so far; the average time taken for successful prosecution/conviction is stated to be 61.94 months (as on 01.02.2018). Taking into account the available facts on the overall functioning of SFIO, particularly the average time taken for completion of investigation, submitting investigation report, average time taken for prosecution, success rate of prosecution etc., the Committee cannot but express their displeasure over lax functioning of this statutory investigative agency under the Ministry. The Committee would therefore, reiterate their recommendation that the Ministry of Corporate Affairs should conduct a comprehensive review of the functioning of SFIO with a view to upgrading/improving its present level of performance to fulfill its statutory mandate.

The Committee find that of the 133 sanctioned posts in different categories in SFIO, there are as many as 69 vacant posts i.e. more than 50%. Moreover out of these, 75 posts are sanctioned posts for deputationists (50 of these are still vacant). In view of the large number of vacancies, the Committee has been time and again emphasizing to fill up the existing vacancies with permanent cadre, as they would be more bound with the organisation in performing their functions. The Committee, therefore, re-emphasise that the SFIO should fill its vacancies with adequate permanent cadre and strengthen both its investigative and prosecution arms by

developing fool-proof fraud detection mechanisms. In order to bring continuity in the functioning of SFIO, they desire that the post of Director, SFIO should have a fixed tenure as is the case with the posts in CBI and ED.

The Committee also note the establishment of full scale 'early warning system', with the estimated cost of Rs 123.68 crore was approved in June 2017. However, as the lowest financial bid was around 100 percent more than the initial estimated project cost, the project at present is stated to be under reconsideration. The Ministry had earlier set up fraud detection modules such as Early Warning System and Forensic Lab, but without any visible benefits accruing therefrom in terms of investigation outcomes. The Committee would therefore recommend that precious funds should not be blocked in such experiments which have no investigative value for the organisation. Early Warning Systems should be deployed only if the Ministry/SFIO are fully satisfied about their proven utility for detection of fraud and investigation of cases and the Ministry is well-equipped to use such systems *real-time* for investigation of cases and their successful prosecution. In this regard, the Ministry should also pay attention to the quality of manpower deployed for investigation and closely monitor their work for fruitful outcomes. The Committee desire that SFIO should be adequately strengthened for particularly detecting and investigating all commercial/corporate frauds in a professional manner. The Committee would also like to be apprised about the complaints-redressal mechanism in the SFIO and the action taken by them in respect of complaints received in the last three years.

4. The Committee note that the number of cases pending with RoCs was

49,433 as on 31.12.2017. During the years 2014-15 to 2017-18 (till 31.12.2017) in 18003 number of cases prosecutions have been filed and 14226 cases have been disposed of during the said period, with Rs 8,45,25,530 awarded as penalty. Keeping in view the huge pendency with RoCs, the Committee observe that RoCs has totally failed in developing an efficacious system and process for investigation and disposal of the cases assigned to them. They feel that the major reason for this dismal performance in disposal of cases is lack of capacity building and infrastructure at all levels in RoCs. The Committee, therefore, reiterate their recommendation that there should be enhanced capacity building at all levels in RoCs along with upgradation of IT infrastructure in order to handle the huge work load. The Committee desire that RoCs as mandated under Section 396 of the Companies Act, 2013, would gainfully apply all tools systematically for concrete outcomes by way of timely investigation and disposal of cases assigned to them. The Committee recommend that the Ministry should initiate proactive steps to follow up and expedite pendency cases with RoCs under intimation to the Committee.

5. The Committee note that Investor Education and Protection Fund (IEPF) Authority was constituted on 7th September 2016 with the objective to make refunds of shares, unclaimed dividends, matured deposits/debentures etc., transferred to IEPF and to promote investor education, awareness and protection. Shares in respect of which dividend has not been paid or claimed for seven or more consecutive years or more shall be transferred by the company to IEPF Authority. An amount of Rs 1989.76 crore has been credited into the account of IEPF (till 11.01.2018); 1227 Companies have

transferred shares worth Rs. 43.9 crore. The Committee further note that as on 25.01.2018, IEPF Authority has received 642 claims (since 07.09.2016) for refund, out of which 85 claims has been refunded, 178 claims has been rejected and 379 claims remain pending for rectifications by Companies. As pointed out by the Committee in their earlier report, the number of applications for refund is expected to increase manifold in coming years. They would therefore stress that the process of refund of claims by IEPF Authority needs to be meticulously and expeditiously carried out. It has been informed that a joint campaign for creating investor awareness has been planned in association with Reserve Bank of India, Securities and Exchange Board of India and Department of Consumer Affairs. The Committee desire that this joint campaign should be carried out in such a way that it must reach gullible investors residing in remotest areas of the country, making them aware about their rights as a investor and the pros and cons of investing in different instrument/schemes. The Committee further advise that such awareness campaign should be done upto panchayat level and the local MPs/MLAs should be involved therein.

6. The Committee note that the Competition Commission of India (CCI) was established in March 2009 with the objectives to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interest of consumers and to ensure freedom of trade. CCI has the powers to regulate mergers or combinations and to reverse mergers or combinations, if such mergers or combinations have or likely to have an appreciable adverse effect on competition in India. The Committee further note that as on 31.01.2018, 223 cases are pending with

CCI; out of these 176 cases are pending for more than one year. Further, a total of 564 combinations notices have been filed, out of which 15 notices were pending. They also note that even after nine years since it commenced operation, the CCI continues to struggle with pendency of cases. The Committee desire that CCI should make earnest efforts to dispose of the cases in a time-bound manner and concrete steps should be taken to further strengthen the infrastructure and manpower resources of CCI to show tangible results in timely disposal of cases. The Committee observe that CCI has not been pro-active enough in taking cognisance of unfair trade practices inimical to consumer interest, such as, charging of extra charges (outside the fare) by airlines companies for blocking/reservation of specific seats to the disadvantage of large number of passengers, predatory pricing or price war in the telecom sector etc. The Committee thus strongly recommend that CCI should in keeping with its mandate, proactively intervene in all such cases of unfair/predatory pricing impinging on vast majority of consumers and other stakeholders.

7. The Committee note that National Company Law Tribunal (NCLT) has been notified on 1st June 2016 for faster resolution of corporate disputes and reducing the multiplicity of agencies, thereby promoting 'ease of doing business' in the country. The Committee also note that Company Law Board (CLB) has transferred 5345 cases to NCLT; High Courts have transferred 3834 cases; fresh cases filed with NCLT (upto 31.12.2017) are 13407; NCLT has disposed 14129 cases from 01.06.2016 to 31.12.2017. The Committee are of the opinion that in the coming years, the number of cases with NCLT is expected to grow tremendously and to dispose of these cases as per

prescribed time limit laid in Companies Act, 2013 and the Insolvency and Bankruptcy Code, adequate steps should be taken immediately to further strengthen the infrastructure and manpower resources of NCLT in both quality and quantity. The Committee recommend that to streamline the smooth functioning of NCLT, Members of NCLT should be provided with autonomy and flexibility to recruit supporting staff/officers and steps should be taken for implementing e-courts in all locations of NCLT and for opening more new benches in the country. The Committee desire that in accordance with its laid out objectives, NCLT should become the main instrument of effecting loan recoveries in the banking sector. The Committee may be apprised about the progress made in this regard within three months of the presentation of this Report.

8. The Committee note that the term 'Shell Company' has not been defined under the Companies Act, 2013. However, based on inputs received from the Members of Task Force co-chaired by Revenue Secretary and Secretary, Ministry of Corporate Affairs, the Ministry has decided to attempt a commonly accepted definition and attributes of 'Shell Companies'. The Ministry have stated that presently, it is not necessary to amend the Companies Act, 2013 to provide for definition of Shell Companies. The Committee further note that Registrar of Companies (RoCs) had identified 2.97 lakh companies which were defaulting in filing of financial statements or annual returns for two or more continuous years and *prima facie* were not in operation. Consequently, 2.26 lakh companies were struck off from the registry. Out of these entities, some may have been merely dormant companies, without any fraudulent intent. Therefore, it is necessary that

while cracking down on shell companies, the Ministry needs to make distinction between those guilty of fraud and those irregular with filings. The Committee thus are of the opinion that to avoid any legal ambiguity and preempt avoidable litigation in the absence of a clear-cut definition of 'Shell Companies' in the Companies Act, 2013, the definition of 'Shell Companies' may be suitably included in the Act itself by bringing in the element of 'fraudulent' intent. The Committee further desire that to prevent corporate misfeasance/malfeasance, there should be *real-time* data-sharing amongst Ministry of Corporate Affairs, and other regulatory enforcement agencies, such as, CBI, ED, DRI, CBDT, SFIO, Department of Financial Services, Financial Intelligent Unit, Central Economic Intelligence Bureau and SEBI. The Committee may be apprised of the progress made in this regard within three months.

9. The Committee note that Section 135 of the Companies Act, 2013, requires every company above the specified thresholds of turnover, or net worth, or net profit, to spend at least two percent of the average net profits earned during three immediately preceding financial years on Corporate Social Responsibility (CSR). The Committee also note that the Ministry of Corporate Affairs has launched National CSR Data Portal in public domain which will facilitate Social audit of CSR projects, besides bringing together CSR contributors, implementers and beneficiaries and aligning CSR activities with national development goals. The Committee further note that till date, the Ministry has received 431 reports from the offices of Regional Directors / Registrar of Companies for non-compliance of Section 135 read with Section 134 (3) (O) of the Companies Act, 2013. The Ministry has

accorded permission for initiating penal action against 199 Companies for non-compliance of CSR provisions for the Financial Year 2014-15; of this, till date concerned ROCs have filed prosecution for 108 Companies and 29 Companies have filed compounding application under Section 441 (6) of the Act. Action on remaining 62 Companies are under process with ROCs. While taking note of the steps taken by the Ministry, the Committee would like to draw the attention of the Ministry to the provisions of Section 135(5) of the Companies Act, 2013, which clearly stipulates that "the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities". It is often observed that the CSR spend by Companies particularly in mining and industrial areas of tribal and backward regions of the country is minuscule as compared to the profits / income accruing from these areas and much lower than the mandated percentage. Such gross mismatch in local CSR expenditure *vis-a-vis* CSR expenditure of an organisation at head quarters / other areas is contrary to both the letter and spirit of the well-thought out provisions of the aforementioned Section 135 (5). The Committee, therefore, strongly recommend that Section 135(5) of the Companies Act, 2013 should be strictly adhered to and enforced to preserve the legislative intent of the CSR mandate so that the desired expenditure is incurred in the local area. The Committee desire that the Ministry should regularly monitor scrupulous compliance of CSR provisions by corporates and follow it up with them in a structured manner. The Committee also emphasise that the areas/activities where CSR is taking place should adhere to the laid out provisions of the Act and Rules framed thereunder so that the Committee may be apprised of the

concrete steps initiated in this regard and the constraints, if any, faced by the Ministry in the matter. The Committee further recommend that the Ministry should conduct a detailed study of the expenditure and implementation of CSR funds by a sample of 100 Companies and submit a report to the Committee within three months.

10. In the light of instances of corporate fraud/malfeasance reported in recent years, the Committee would recommend that the Ministry of Corporate Affairs, as the nodal agency, should develop an exclusive web portal for registering complaints from individuals/entities including whistle-blowers. The Ministry should have the responsibility to process these complaints and refer them to the appropriate agency including SFIO for investigation, reporting and prosecution. Strict time-lines should be fixed to address and resolve these complaints, which should also be duly reflected in the Annual Report of the Ministry presented to Parliament every year to bring not only the problems which arise but also the behaviour pattern of companies in public domain.

New Delhi;
08 March, 2018
17 Phalguna, 1939 (Saka)

Dr. M. Veerappa Moily,
Chairperson
Standing Committee on Finance

Minutes of the Twelfth sitting of the Standing Committee on Finance (2017-18)

The Committee sat on Friday, the 16 February, 2018 from 1530 hrs. to 1610 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri Bandaru Dattatreya
3. Shri Nishikant Dubey
4. Shri Venkatesh Babu T.G.
5. Shri P.C. Gaddigoudar
6. Shri Rattan Lal Kataria
7. Shri Chandrakant Khaire
8. Shri Bhartruhari Mahtab
9. Prof. Saugata Roy
10. Shri Gopal Shetty
11. Shri Kiritbhai Solanki
12. Dr. Kirit Somaiya
13. Shri Dinesh Trivedi
14. Shri Shivkumar Udasi

RAJYA SABHA

15. Shri Naresh Agrawal
16. Shri A. Navaneethakrishnan
17. Shri Mahesh Poddar
18. Dr. Mahendra Prasad
19. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi | - | Joint Secretary |
| 2. | Shri Rajesh Ranjan Kumar | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora | - | Deputy Secretary |

WITNESSES

Ministry of Corporate Affairs

1. Shri Injeti Srinivas, Secretary
2. Shri N.K. Bholra, Director General
3. Smt. Reena Sinha Puri, JS & FA
4. Shri K.V.R. Murty, Joint Secretary

5. Shri Gyaneshwar Kumar Singh, Joint Secretary
6. Shri A. Asholi Chalai, Joint Secretary
7. Smt. Geeta Singh Rathore, Deputy Director General
8. Shri Anil Kumar Srivastava, CCA
9. Shri Amardeep Singh Bhatia, Director, SFIO
10. Shri Pankaj Garg, Secretary, NCLT
11. Smt. Smita Jhingran, Secretary, CCI

4. At the outset, the Chairperson welcomed the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Committee took the evidence of the representatives of the Ministry of Corporate Affairs on the Demands for Grants (2018-19). The major issues discussed were persistent underutilisation of allocated funds, definition of 'Shell Companies', huge pendency of cases with Registrar of Companies (ROCs), Competition Commission of India (CCI), Investor Education and Protection Fund Authority (IEPFA), non compliance of provisions of Corporate Social Responsibility (CSR) by companies, capacity building and filling up of vacant posts in SFIO and CCI and fixed tenure for the post of Director in SFIO. The Chairperson then directed the representatives of Ministry of Corporate Affairs to furnish written replies to the points raised by the Members during the discussion within a week to the Secretariat.

The witnesses then withdrew.

A verbatim record of the proceedings has been kept

The Committee then adjourned.

Minutes of the Thirteenth sitting of the Standing Committee on Finance
The Committee sat on Thursday, the 8 March, 2018 from 1500 hrs to 1645 hrs
in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri Nishikant Dubey
3. Shri P.C. Gaddigoudar
4. Shri Rattan Lal Kataria
5. Shri Bhartruhari Mahtab
6. Shri Prem Das Rai
7. Prof. Saugata Roy
8. Shri Rajiv Pratap Rudy
9. Shri Gopal Shetty
10. Dr. Kiritbhai P. Solanki
11. Dr. Kirit Somaiya
12. Shri Shivkumar Udasi

RAJYA SABHA

13. Shri Mahesh Poddar
14. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi | - | Joint Secretary |
| 2. | Shri Rajesh Ranjan Kumar | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulmohan Singh Arora | - | Deputy Secretary |

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. Thereafter, the Committee took up the following draft reports for consideration and adoption:

- (i) Draft Report on Demands for Grants (2018-19) of the Ministry of Finance (Departments of Economic Affairs, Expenditure, Financial Services and Investment & Public Asset Management).
- (ii) Draft Report on Demands for Grants (2018-19) of the Ministry of Finance (Department of Revenue).

- (iii) Draft Report on Demands for Grants (2018-19) of the Ministry of Corporate Affairs.
- (iv) Draft Report on Demands for Grants (2018-19) of the Ministry of Planning (NITI).
- (v) Draft Report on Demands for Grants (2018-19) of the Ministry of Statistics and Programme Implementation.

After some deliberations, the Committee adopted the above draft Reports with minor modifications and authorised the Chairperson to finalise them and present these Reports to Parliament.

The Committee then adjourned.