

AMENDMENTS IN THE COMPANIES ACT

[CA P. N. SHAH and CA DARSHAN SHAH]

1. BACKGROUND:

The Companies Act, 1956, has been replaced by the Companies Act, 2013. This Act came into force on 01.04.2014. The Act has been amended in 2015 by the Companies (Amendment) Act, 2015, in 2017 by the Companies (Amendment) Act, 2017 and in 2019 by the Companies (Amendment) Act, 2019. On 6th March, 2020 the Corporate Affairs Minister introduced “The Companies (Amendment) Bill, 2020.” in the parliament. This Bill was passed by the Parliament in September 2020. It has received the assent of the President on 28th September, 2020 and it has become The Companies Amendment Act, 2020 (Amendment Act).

While introducing these amendments the Corporate Affairs Minister has stated that “It is proposed to amend various provisions of the Act to decriminalize minor procedural or technical lapses under the provisions of the said Act, into Civil wrong and considering the overall pendency of the Courts, a principle based approach was adopted to further remove criminality in case of defaults; which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest. In addition, the Government also proposes to provide greater ease of living to corporates through certain other amendments to the Act.”

There are 66 sections in this Amendment Act amending several sections of the companies Act. These amendments will come into force on the date to be notified by the Central Government. In this Article some of the important amendments in the Amendment Act are discussed.

2. MAJOR / IMPORTANT AMENDMENTS

2.1 DEFINITIONS [SECTION 2(52)]:

(Applicable w.e.f. 22nd January, 2021)

Section 2(52) defines a “Listed Company” to mean a company which has any of its securities listed on any recognized Stock Exchange. By amendment of this section, it is now provided

that the Central Government may, in consultation with SEBI, prescribe that any class of Companies which have such listed **Securities** will not be considered as listed Companies.

As per Rule 2A of The Companies (Specification of Definitions Details) Rules, 2014 which is applicable **w.e.f. 1st April, 2021**, following companies are not to be considered as listed companies.

- a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their:
 - (i) Non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
 - (ii) Non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
- b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
- c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

2.2 FORMATION OF COMPANIES WITH CHARITABLE OBJECTS - (SECTION 8):

(Applicable w.e.f. 21st December, 2020)

At Present Section 8(11) provides for levy of Fine on the Company for default in compliance with the requirements of the section. Further, there is a provision for punishment to the defaulting director/officer by way of imprisonment or fine between Rs.25,000/- and Rs.25 Lakhs or with both. By amendment of the section the provision for imprisonment of defaulting Director/Officer has been deleted. In case of default by a Director or Officer, fine of Rs.25,000/- (Minimum) up to Rs.25 Lakhs (Maximum) may be levied.

2.3 RECTIFICATION OF NAME OF COMPANY - (SECTION 16):

(Applicable w.e.f. 1st September, 2021)

- (i) Section 16(1)(b) provides that in case of similarity of names of two companies the Central Government may direct the company to change its name. At present, the company is given 6 months' time for this purpose. This time limit is now reduced to 3 months.
- (ii) Section 16(3), at present, provides for levy of Fine on the company and defaulting officer for non-compliance with the provisions of 16(1). This provision for fine is now deleted. New section 16(3) now provides that in case of non-compliance with the provision of section 16(1), the Central Government will allot a new name to the company as per the Rules to be prescribed and ROC will issue a new Certificate of Incorporation with the new name which the company will have to use.

2.4 PUBLIC OFFER AND PRIVATE PLACEMENT (SECTION 23):

(Not yet enforced)

Section 23, at present, provides for issue of shares and securities by a Public Company or a Private Company by public offer or private placement. Now Sub-sections (3) and (4) are added in section 23 to provide that such class of public companies may issue such class of securities for the purposes of listing on permitted Stock Exchanges in permissible foreign countries as may be prescribed by Rules. It is also provided that the Central Government may exempt any class of such public Companies from any of the provisions of Chapter III or IV or sections 89, 90 or 127 by a Notification.

2.5 MATTERS TO BE STATED IN PROSPECTUS- (SECTION 26):

(Applicable w.e.f. 21st December, 2020)

Section 26(9), at present, provides for levy of Fine on the Company for default in compliance with the requirement of the section. Further, every person who is knowingly a party to the issue of such prospectus is punishable with imprisonment or with Fine or with both. By amendment of this section, the punishment with imprisonment is deleted. The fine of Rs.50,000/- (Minimum) up to Rs.3,00,000/- (Maximum) can be levied on such person.

2.6 SECURITIES TO BE DEALT WITH IN STOCK EXCHANGE (SECTION 40):

(Applicable w.e.f. 21st December, 2020)

Section 40(5), at present, provides for levy of Fine on the Company for non-compliance with the requirements of the section. Further, there is a provision for imprisonment or levy of fine on every defaulting officer. By amendment of this section, the provision for

imprisonment has been deleted. However, the provision for fine of Rs.50,000/- (Minimum) up to Rs.3,00,000/-(Maximum) will continue.

2.7 VARIATION OF SHAREHOLDERS RIGHTS – (SECTION 48):

(Applicable w.e.f. 21st December, 2020)

Section 48(5), provides that for non-compliance with the provisions of the section, Fine between Rs.25,000/- to Rs.5,00,000/- can be levied on the Company. Further, there is a provision for imprisonment of defaulting officer or levy of fine between Rs.25,000/- to Rs.5,00,000/- or both. This provision for levy of fine on the company and punishment to the defaulting officer is now deleted by amendment of the section.

2.8 TRANSFER AND TRANSMISSION OF SECURITIES – (SECTION 56):

(Applicable w.e.f. 21st December, 2020)

Section 56(6), at present, provides for levy of Fine on the Company and every officer in default for non-compliance with the provisions of the section. This provision for fine is now replaced by levy of penalty as under:

Person in Default	Existing Fine		Amended Provision
	Minimum	Maximum	Penalty
(i) Company	Rs.25000/-	Rs.500000/-	Rs.50000/-
(ii) Officer in Default	Rs.10000/-	Rs.100000/-	Rs.50000/-

2.9 RECTIFICATION OF REGISTER OF MEMBERS- (SECTION 59):

(Applicable w.e.f. 21st December, 2020)

Section 59(5), at present, provides that if there is non-compliance with the order of the Tribunal under this section, the company will be liable to a fine. It is also provided that every officer who is in default will be liable to punishment by way of imprisonment or fine or both. This provision for levy of fine on the company and punishment to defaulting officer is now deleted by amendment of this section. In other words, section 59(5) is deleted.

2.10 FURTHER ISSUE OF SHARE CAPITAL (SECTION 62):

(Applicable w.e.f. 22nd January, 2021)

Section 62(1)(a) refers to procedure of further issue of Share Capital. Section 62(1)(a)(i) provides that the offer for issue of such shares shall be made by notice specifying the

number of shares offered and limiting the time not being less than 15 days. By amendment of this provision, it is now provided that this period of 15 days time shall be reduced to 7 days from the date of offer as per Rule 12A of The Companies (Share Capital and Debentures) Amendment Rules, 2021 w.e.f. 1st April, 2021.

2.11 NOTICE TO BE GIVEN TO ROC FOR ALTERNATION OF SHARE CAPITAL – (SECTION 64):

(Applicable w.e.f. 21st December, 2020)

Section 64(2) provides for levy of penalty for non-compliance with the provisions of the section. This penalty is reduced as under:

Person in Default	Existing Penalty	Revised Penalty	
		Minimum	Maximum
(i) Company	Rs.1000/- Per day or Rs.500000/- Whichever is less	Rs.500/- per day	Rs.500000/-
(ii) Officer in Default	Same as above	Rs.500/- per day	Rs.100000/-

2.12 REDUCTION OF SHARE CAPITAL – (SECTION 66):

(Applicable w.e.f. 21st December, 2020)

Section 66(11), at present, provides for levy of Fine on the Company of Rs.5 Lakhs subject to maximum of Rs.25 Lakhs for non-compliance with provisions of section relating to publication of order of the Tribunal. This provision for levy of fine is deleted by amendment of this section. However, the provision in section 66(10) for levy of fine and punishment by way of imprisonment of a defaulting officer as provided in section 447 is continued.

2.13 POWER OF A COMPANY TO PURCHASE ITS OWN SHARES - (SECTION 68):

(Applicable w.e.f. 21st December, 2020)

At present, section 68(11) provides for levy of fine between Rs.1 Lakh to Rs.3 Lakhs on the company as well as the defaulting officer for non-compliance with the provisions of the section. Further, there is a provision for imprisonment of the defaulting officer up to 3 years. This provision for imprisonment of defaulting officer is now deleted by amendment of this section.

2.14 DEBENTURE – (SECTION 71):

(Applicable w.e.f. 21st December, 2020)

Section 71(11) provides for levy of fine and also for imprisonment of defaulting officer for failure to comply with the order of the Tribunal under section 71. This Provision for levy of fine and imprisonment is deleted by amendment of this section.

2.15 PUNISHMENT FOR CONTRAVENTION OF CHAPTER- VI - (SECTION 86):

(Applicable w.e.f. 21st December, 2020)

Section 86 provides for levy of fine on the company and also on every defaulting officer for contravention of chapter VI (Sections 77 to 87) dealing with Registration of charges. Further, every defaulting officer can be punished by way of imprisonment upto 6 months. By amendment of this section, the provision for imprisonment of the defaulting officer is deleted. Further, it is now provided that for contravention of the provisions of Chapter VI, the company shall be liable to pay a penalty of Rs.5 Lakhs and every defaulting officer shall be liable to pay a penalty of Rs.50,000/-.

2.16 REGISTER OF MEMBERS (SECTION 88):

(Applicable w.e.f. 21st December, 2020)

Section 88(5) provides that if a company fails to maintain the Register of Members, Debenture-holders or other Security Holders in accordance with provisions of section 88(1) or 88(2) the company and every defaulting officer will be liable to pay a fine of Rs.50,000/- which may extend up to Rs.3 Lakhs. For continuing failure a further fine which may extend to Rs.1,000/- per day is payable. By amendment of this section it is now provided that for the above default the company will be liable to pay penalty of Rs.3 Lakhs and every defaulting officer shall be liable to pay penalty of Rs.50,000/-.

2.17 DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE – (SECTION 89):

(i) Section 89(5) provides that if a person fails to file the declaration required under section 89(1), (2) or (3), he is liable to pay fine up to Rs.50,000/-. In case of continuing default, a further fine up to Rs.1,000/- per day is also payable. This provision is now amended to provide that for the above default, penalty of Rs.50,000/- shall be payable by such person. Further, for continuing default to a further penalty of Rs.200/- per day, subject to a maximum of Rs.5 Lakhs, shall be payable. (Applicable w.e.f. 21st December, 2020)

(ii) Section 89(7) provides that for delay in filing Return under section 89(6), the company and every defaulting officer shall be liable to pay fine of Rs.500/- which

may extend to Rs.1,000/-. For continuing default, a further fine up to Rs.1,000/- per day is also payable. This section is now amended to provide that for the above default the company and every defaulting officer shall be liable to pay penalty of Rs.1,000/- per day during which the default continues, subject to a maximum of Rs.5 lakhs in the case of company and a maximum of Rs.2 Lakhs in the case of every officer in default. (Applicable w.e.f. 21st December, 2020)

- (iii) A new sub-section (11) is added in section 89 to give power to the Central Government to notify exemption to any class of persons from complying with the requirements of section 89(1) to 89 (9) if it is necessary to grant such exemption in the public interest. The Central Government may specify such conditions as it deems fit while granting this exemption. (Applicable w.e.f. 22nd January, 2021)

2.18 REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY – (SECTION 90):

(Applicable w.e.f. 21st December, 2020)

- (i) At present, Section 90(10), provides that if any person fails to make the declaration as provided in section 90(1), he shall be liable to pay fine of Rs.1 Lakh which may extend to Rs.10 Lakhs. For continuing default, there is a further fine up to Rs.1,000/- per day. This section is now amended to provide that, for the above failure, penalty of Rs.50,000/- will be levied. Further, for continuing default, penalty of Rs.1,000/- per day will be payable, subject to a maximum of Rs.2 Lakhs.
- (ii) At present, Section 90(11) provides that if a company does not comply with the provisions of section 90(2), (4) or (4A) relating to maintenance of the Register and filing information etc., the Company and every defaulting officer is liable to pay fine of Rs.10 Lakhs which may extend to Rs.50 Lakhs . In case of continuing default, a further fine up to Rs.1,000/- per day is payable. This provision is now amended to provide that for the above default the company shall be liable to pay penalty of Rs.1 Lakh and in case of continuing default the company will be liable to pay further penalty of Rs.500/- for every day, subject to a maximum of Rs.5 Lakhs. Further, every defaulting officer shall be liable to pay penalty of Rs.25,000/- and for continuing default he will be liable to pay a further penalty of Rs.200/- per day, subject to a maximum of Rs.1 Lakh.

2.19 ANNUAL RETURN (SECTION 92):

(Applicable w.e.f. 21st December, 2020)

- (i) Section 92(5) provides that if a company fails to file the Annual Return within the time stated in section 92(4), the company and every officer in default shall be liable to pay penalty of Rs.50,000/-. In case of continuing default, a further penalty of Rs.100/- per day, subject to a maximum of Rs.5 Lakhs is payable. By amendment of this section, the above penalty of Rs.50,000/- is reduced to Rs.10,000/-. In case of continuing default, the maximum penalty of Rs.5 Lakhs is reduced to Rs.2 Lakhs in the case of the company and to Rs.50,000/- in the case of every defaulting officer.
- (ii) Section 92(6) provides that if the Company Secretary in practice gives a wrong certificate, he is liable to pay fine of Rs.50,000/- which may extend to Rs.5 Lakhs . This Provision is now amended to provide that for the above default, penalty of Rs.2 Lakhs shall be payable by the Company Secretary in practice.

2.20 PROXIES – (SECTION 105):

(Applicable w.e.f. 21st December, 2020)

Section 105(5) provides for levy of fine up to Rs.1 Lakh for any irregularity on the part of an officer of the company as specified in the section. By amendment of this section, it is now provided that for the above default penalty of Rs.50,000/- shall be payable by the officer in default.

2.21 RESOLUTIONS AND AGREEMENT TO BE FILED (SECTION 117):

- (i) Section 117(2), at present, provides that for failure to file Resolutions or Agreements within the time as required under section 117(1), the company is liable to penalty of Rs.1 Lakh. In case of continuing default, a further penalty of Rs.500/- per day, subject to a maximum of Rs.25 Lakhs is payable. Further, every officer in default, including a Liquidator, if any, is liable to pay penalty of Rs.50,000/-. In case of continuing default, a further penalty of Rs.500/- per day, subject to a maximum of Rs.5 Lakhs is payable. This section is amended to provide that now the penalty payable by the company for the above default shall be Rs.10,000/- and for continuing default, the further penalty shall be Rs.100/- per day subject to maximum of Rs.2 lakhs. In the case of defaulting officer (including a Liquidator) the penalty

shall be Rs.10,000/- and in case of continuing default, a further penalty shall be Rs.100/- per day, subject to a maximum of Rs.50,000/-. (Applicable w.e.f. 21st December, 2020)

- (ii) Section 117(3)(g), at present, provides that the provision of this section shall not apply to resolutions for grant of Loans, Guarantees etc. given by a Banking Company in the ordinary course of its business. By amendment of this section, this exemption is extended to specified NBFC's and Housing Finance Companies in consultation with RBI and NHB. (Applicable w.e.f. 22nd January, 2021). The Rules have not yet specified NBFC's / HFC's which are exempted from aforesaid section.

2.22 UNPAID DIVIDEND ACCOUNT - (SECTION 124):

(Applicable w.e.f. 24th March, 2021)

Section 124(7) provides for levy of fine for non-compliance with the provisions of this section. The fine in the case of the company is Rs.5 lakhs which may extend up to Rs.25 Lakhs. The fine in the case of every defaulting officer is Rs.1 Lakh which may extend to Rs.5 Lakhs. By amendment of this section, it is now provided that in the case of the company, penalty of Rs.1 Lakh will be payable for non-compliance with the section. In case of continuing default, a further penalty of Rs.500/- per day, subject to a maximum of Rs.10 Lakhs, will be payable. In the case of every defaulting officer, the penalty will be Rs.25,000/-. For continuing default, a further penalty of Rs.100/- per day, subject to a maximum of Rs.2 Lakhs will be payable.

2.23 BOOKS OF ACCOUNT TO BE KEPT BY A COMPANY - (SECTION 128):

(Applicable w.e.f. 21st December, 2020)

Section 128(6), at present, provides that for contravention of the provisions of this section, the Managing Director, Whole time Director in charge of Finance, Chief Financial Officer or any person in charge of compliance of this section will suffer punishment by way of imprisonment for a term up to one year or with fine of Rs.50,000/- which may extend to Rs.5 Lakh or with both. By amendment of this section, the provision for punishment by way of imprisonment has been deleted. The provision for levy of above fine of Rs.50,000/- to Rs.5 Lakhs is retained.

2.24 PERIODICAL FINANCIAL RESULTS – (NEW SECTION 129A):

(Applicable w.e.f. 22nd January, 2021. However, no notification is so far issued by the Central Government under this section.)

A new section 129A is inserted in The Companies Act, 2013, to provide that the Central Government may require any class of unlisted companies to comply with the following requirements.

- (i) To prepare Financial Results of the Company on such periodical basis and in such form as may be prescribed.
- (ii) To obtain approval of the Board of Directors and complete audit or Limited Review of such periodical results in such manner as may be prescribed.
- (iii) To file copy of such Financial Results with ROC within 30 days of the completion of the relevant period and pay the prescribed fee.

It may be noted that this provision is similar to the SEBI Regulation requiring all listed companies to prepare quarterly financial results in the prescribed form.

2.25 FINANCIAL STATEMENT, BOARD REPORT, ETC. – (SECTION 134):

(Applicable w.e.f. 21st December, 2020)

Section 134 deals with preparation of Financial Statements, Report of Board of Directors, Circulation of these Statements and Reports etc. If there is contravention of any of these provisions, section 134(8) provides for levy of fine of Rs.50,000/- which may extend to Rs.25 Lakhs on the Company. Further, every officer in default shall be punishable with imprisonment up to 3 years or a fine of Rs.50,000/- which may extend to Rs.5 lakhs. This section is now amended to provide that the company shall be liable to pay penalty of Rs.3 lakhs. Further, the defaulting officer of the company shall be liable to pay penalty of Rs.50,000/-The existing provision for imprisonment is deleted.

2.26 CORPORATE SOCIAL RESPONSIBILITY – (SECTION 135):

(Applicable w.e.f. 22nd January, 2021)

- (i) Section 135 deals with the requirement for spending 2% of the average net profit of the specified company for the 3 immediately preceding years for CSR activities as specified in schedule VII. Section 135(5) is now amended to provide that if the company spends an amount in excess of the amount required to be spent for CSR activities, the company may set off such excess amount against the requirement to spend the amount for CSR in such number of succeeding Financial Years and in such manner as may be prescribed.
- (ii) The existing section 135(7), which was added in 2019, provides for payment of fine by the company and imprisonment and fine by the defaulting officer. This provision

is now amended and it is now provided that if there is default in complying with the provisions of section 135(5) or (6), the following penalty shall be payable.

- (a) The company shall be liable to pay penalty of twice the amount required to be transferred to the fund specified in Schedule VII or to the unspent CSR Account or Rs.1 Cr, whichever is less.
- (b) Every Officer in default shall be liable to pay penalty of 10% of the amount required to be transferred to the specified fund as stated in (a) above or Rs.2 Lakhs, whichever is less. Thus, the punishment by way of imprisonment of the defaulting officer is deleted.
- (iii) Sub-section (9) is added in section 135 to provide that if the CSR amount required to be spent under section 135(5) does not exceed Rs.50 Lakhs, the requirement of constituting a CSR committee of the Board under section 135(1) shall not apply. In such a case, the functions of the CSR Committee shall be discharged by the Board of Directors.

2.27 REPORT ON CORPORATE SOCIAL RESPONSIBILITY – (NEWLY INSERTED SUB-RULE (1B) OF RULE 12 OF COMPANIES (ACCOUNTS) RULES, 2014 IN ACCORDANCE OF SECTION 135):

As per the said Rule, every Company covered under the provisions of Section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be. However, the said Form CSR-2 shall be filed separately on or before 31st May, 2022 for FY 2020-21.

2.28 COPY OF FINANCIAL STATEMENT TO BE FILED WITH ROC – (SECTION 137):

(Applicable w.e.f. 21st December, 2020)

Section 137(3), at present, provides that if there is a delay in filling the Financial Statements with ROC as provided in section 137(1) or (2), penalty of Rs.1,000/- per day of default is payable by the company, subject to a maximum of Rs.10 lakhs. Further, the Managing Director and CFO or in their absence the Director in Charge with compliance of these provisions and in his absence all Directors of the company will have to pay Penalty of Rs.1 Lakh and in case of continuing default, a further penalty of Rs.100/- per day, subject to a maximum of Rs.5 Lakhs is payable. By amendment of this section, the above Penalty is reduced as under.

- (i) In the case of the Company, penalty will be Rs.10,000/- and in case of continuing default, penalty will be Rs.100/- per day of default, subject to a maximum of Rs.2 lakh.
- (ii) In the case of Managing Director, CFO etc. the penalty will be Rs.10,000/- and in case of continuing default, penalty will be Rs.100/- per day of default, subject to a maximum of Rs.50,000/-.

2.29 REMOVAL, RESIGNATION OF AUDITOR AND GIVING OF SPECIAL NOTICE (SECTION 140):

(Applicable w.e.f. 21st December, 2020)

At present, Section 140(3) provides for penalty payable by the Auditor for non-compliance with the provisions of section 140(2). This penalty is Rs.50,000/- or amount of his remuneration, whichever is less. In case of continuing default, the penalty is Rs.500/- per day of default, subject to a maximum of Rs.5 lakhs. By amendment of this section, the above maximum amount of penalty is reduced to Rs.2 lakh. It may be noted that section 140(2) provides for filling the statement about Resignation by Auditor in the prescribed form, with ROC or C&AG (if applicable).

2.30 POWERS AND DUTIES OF AUDITORS AND ACCOUNTING STANDARDS (SECTION 143):

(Applicable w.e.f. 21st December, 2020)

Section 143(12) deals with reporting by Auditors, Cost Accountants and Company Secretary in practice. If there is default in complying with this section, it is provided in section 143(15) that a Fine of Rs.1 lakh which may extend to Rs.25 lakhs will be payable by the Auditor, Cost Accountant or Company Secretary in practice. This provision is now amended to provide that in the case of a listed company, the penalty of Rs.5 Lakhs and in the case of other companies, penalty of Rs.1 lakh will be payable.

2.31 PUNISHMENT FOR CONTRAVENTION OF SECTIONS 139 TO 146 (SECTION 147):

(Applicable w.e.f. 21st December, 2020)

Sections 139 to 146 deal with "Audit and Auditors". Section 147 provides for levy of Fine etc. for contravention of these sections as under.

- (i) For contravention of Sections 139 to 146, Section 147(1) provides that the Company is liable to pay fine of Rs.25,000/- which may extend to Rs.5 lakhs. Further, every

officer in default is punishable with imprisonment up to one year or with fine of Rs.10,000/- which may extend to Rs.1 lakh or with both. By amendment of this provision, the punishment by way of imprisonment is deleted.

- (ii) Section 147(2) provides for levy of fine on the Auditor for contravention of sections 139, 143, 144 or 145. By amendment of this section, reference to section 143 is deleted. However, there is no change in the amount of fine of Rs.25,000/- to Rs.5 lakhs or 4 times the remuneration of the Auditor whichever is less.
- (iii) It may be noted that the proviso to section 147(2) provides that if an Auditor has knowingly or willfully contravened the provisions of sections 139, 144 or 145 with the intension to deceive the company or its Shareholders, Creditors or Tax Authorities, he shall be punishable with imprisonment up to one year and with fine of Rs.50,000/- to Rs.25 lakh or 8 times his remuneration whichever is more. This provision is not amended.

2.32 BOARD OF DIRECTORS (SECTION 149):

(Applicable w.e.f. 18th March, 2021)

Section 149(9) provides that an Independent Director shall be entitled to a fee as provided in section 197(5), reimbursement of expenses and profit related commission. By amendment of this section, it is now clarified that if a company has no profits or its profits are inadequate, an Independent Director may receive remuneration, exclusive of fees payable under section 197(5), in accordance with the provisions of Schedule V.

SCHEDULE V AMENDMENTS

In the said Schedule, the remuneration payable by Companies having profits and having no profits or inadequate profits also covers other Directors along with Managerial persons at present. In cases where Company has no or inadequate profits, maximum remuneration limits were prescribed for managerial persons ranging from Rs. 60 lakhs to more than Rs. 120 lakhs depending upon effective capital of the Company. Through inclusion of other Directors in Schedule V amendments, such limit is also defined for other directors which is ranging from Rs. 12 lakhs to more than Rs. 24 lakhs by passing ordinary resolution. Also, remuneration in excess of above limits may be paid if special resolution is passed by the shareholders.

2.33 NUMBER OF DIRECTORSHIPS (SECTION 165):

(Applicable w.e.f. 21st December, 2020)

Section 165(6) provides that if a person accepts an appointment as a Director in contravention of section 165(1), he shall be liable to a Penalty of Rs.5,000/- for each day of default. This section is now amended to provide that in such a case penalty shall be Rs.2,000/ - for each day of default, subject to a maximum of Rs.2 lakhs.

2.34 VACATION OF OFFICE OF DIRECTOR (SECTION 167):

(Applicable w.e.f. 21st December, 2020)

Section 167(2) provides that if a person functions as a Director even when he knows that the office of Director held by him has become vacant as provided In section 167(1), he shall be punishable with imprisonment for a term up to one year or with fine of Rs.1 lakh which may extend to Rs.5 lakhs or both. This provision for punishment by way of imprisonment is now deleted by amendment of this section. However, the provision for fine of Rs.1 lakh to Rs.5 lakhs will continue.

2.35 PUNISHMENT FOR CONTRAVENTION OF SECTIONS 149 TO 171 (SECTION 172):

(Applicable w.e.f. 21st December, 2020)

It is provided in section 172 that for contravention of any of the sections 149 to 171 ,if no specific punishment is provided under any of the sections, the company and every officer of the company, who is in default, shall be punishable with fine of Rs.50,000/- which may extend to Rs.5 lakhs. This provision for levy of Fine is now replaced, by amendment of the section, to levy of penalty on the company and the defaulting officer of Rs.50,000/-. For continuing default, a further penalty of Rs.500/- for each day of default will be levied, subject to a maximum of Rs.3 Lakhs in the case of the company and Rs.1 Lakh in the case of the defaulting officer.

2.36 NOMINATION AND REMUNERATION COMMITTEE AND STAKEHOLDERS RELATIONSHIP COMMITTEE (SECTION 178):

(Applicable w.e.f. 21st December, 2020)

Section 178(8) provides that for contravention of the provisions of section 177 (Audit Committee) and 178 the company shall be punishable with fine of Rs.1 lakh which may extend to Rs.5 lakhs. Further, every officer of the company in default shall be punishable with imprisonment up to one year or with fine of Rs.25,000/- to Rs.1 lakh or with both. By

amendment of this section, it is now provided that the punishment to the company for such default will be levy of penalty of Rs.5 lakhs. So far as the defaulting officer is concerned, the penalty leviable shall be Rs.1 lakh. The provision relating to imprisonment of defaulting officer has now been deleted.

2.37 DISCLOSURE OF INTEREST BY DIRECTOR (SECTION 184):

(Applicable w.e.f. 21st December, 2020)

At present, if a Director contravenes the provisions of Section 184(1) or (2) he is punishable with imprisonment up to one year or with fine up to Rs.1 lakh or with both. By amendment of this section, the provision for imprisonment is deleted. Now, for contravention of this section, Director will be liable to pay penalty of Rs.1 lakh.

2.38 INVESTMENT OF COMPANY TO BE HELD IN ITS OWN NAME (SECTION 187):

(Applicable w.e.f. 21st December, 2020)

Section 187(4) provides that for contravention of this section, the company is liable to pay a fine of Rs.25,000/- which may extend to Rs.25 lakhs. Further, every officer of the company, who is in default is punishable with imprisonment up to 6 months or with fine of Rs.25000/- which may extend to Rs.1 lakh or with both. This provision is now amended and the provision for imprisonment of defaulting officer is deleted. The penalty payable by the company will now be Rs.5 lakhs and the penalty payable by every defaulting officer will be Rs.50,000/-.

2.39 RELATED PARTY TRANSACTIONS (SECTION 188):

(Applicable w.e.f. 21st December, 2020)

Under section 188(5) it is provided that any Director or any other employee of the company who had entered into or authorised the contract or arrangement in violation of the provisions of the section is punishable as under.

- (i) In case of a listed company, Punishment is imprisonment up to one year or with fine of Rs.25,000/- which may extend to Rs.5 lakhs or with both. This provision is amended and the punishment by way of imprisonment is deleted. Now, only penalty of Rs.25 lakhs will be levied for such default.
- (ii) In case of other companies, the punishment at present is by way of fine of Rs.25,000/- which may extend to Rs.5 lakhs. This provision is now amended to provide for levy of penalty of Rs.5 lakhs for such default.

2.40 SECRETARIAL AUDIT FOR BIGGER COMPANIES (SECTION 204):

(Applicable w.e.f. 21st December, 2020)

Section 204(4) provides for levy of fine of Rs.1 lakh which may extend to Rs.5 lakhs on the company, any officer of the company or company secretary in practice for the contravention of the provisions of this section. This provision is now amended to provide for levy of penalty of Rs.2 Lakhs for such contravention.

2.41 MERGER AND AMALGAMATION OF COMPANIES (SECTION 232):

(Applicable w.e.f. 21st December, 2020)

At present, section 232(8) provides that a Transferor Company or a Transferee Company which contravenes the provisions of the section, the defaulting company shall be liable to pay a fine of Rs.1 lakh which may extend to Rs.25 lakhs. Further, every defaulting officer is punishable with imprisonment up to one year or with fine of Rs.1 Lakh which may extend to Rs.3 Lakhs or with both. This provision is now amended to provide that for this contravention the company and every officer in default shall be liable to pay penalty of Rs.25,000/-. For continuing default, a further penalty of Rs.1,000/- for every day of default, subject to a maximum of Rs.3 lakhs shall be payable. The provision for imprisonment of defaulting officer is now deleted.

2.42 POWERS OF TRIBUNAL (SECTION 242):

(Applicable w.e.f. 21st December, 2020)

Section 242(8) provides that for contravention of section 242(5) the company shall have to pay fine of Rs.1 Lakh which may extend to Rs.25 Lakhs. Further, every officer of the company in default is punishable with imprisonment up to 6 months or with fine of Rs.25,000/- which may extend to Rs.1 lakh or with both. By amendment of this section, the provision for punishment by way of imprisonment is deleted. However, the amount of fine is retained.

2.43 CONSEQUENCE OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS (SECTION 243):

(Applicable w.e.f. 21st December, 2020)

Section 243(2) provides that any person who knowingly acts as a Managing Director, other Director or Manager of a company in contravention of the provisions of section 243(1)(b) or 243(1A) and every other Director who is knowingly a party to such contravention shall be punishable with imprisonment up to 6 months or with fine up to Rs.5 lakhs or both. By

amendment of this section the punishment by way of imprisonment is deleted. However, the punishment by way of fine up to Rs.5 Lakhs is retained.

2.44 VALUATION BY REGISTERED VALUERS (SECTION 247):

(Applicable w.e.f. 24th March, 2021)

- (i) Section 247(3), at present, provides that if a Valuer contravenes the provisions of section 247 or the applicable Rules, he shall be liable to pay a fine of Rs.25,000/- which may extend to Rs.1 Lakh. This provision is now amended to provide that for such contravention the valuer will be liable to pay penalty of Rs.50,000/-.
- (ii) Proviso to the above section, at present, provides that if the Valuer has contravened such provisions with the intention to defraud the company or its Members, he shall be punishable with imprisonment up to one year and with a fine of Rs.1 Lakh which may extend to Rs.5 Lakhs. It may be noted that this provision is not amended.

2.45 PROMOTERS, DIRECTORS ETC. TO CO-OPERATE WITH COMPANY LIQUIDATOR (SECTION 284):

(Applicable w.e.f. 21st December, 2020)

Section 284(2) provides that if a person fails to discharge his obligation under section under section 284(1), he shall be punishable with imprisonment up to 6 months or with fine up to Rs.50,000/- or with both. By amendment of this section, the provision for imprisonment and levy of fine is deleted. Section 284(2) is replaced by the new provisions as under:

- (i) If the person does not co-operate with the Company Liquidator under section 284(1), the Liquidator can make an application to the Tribunal for necessary direction.
- (ii) On receipt of such application the Tribunal has to give directions to the person to extend co-operation to the liquidator.

2.46 DISSOLUTION OF COMPANY BY TRIBUNAL – (SECTION 302):

(Applicable w.e.f. 21st December, 2020)

Section 302(4) provides that if the Liquidator makes a default in forwarding a copy of the order as provided in section 302(3) to ROC, the Liquidator shall be liable to pay fine up to Rs.5,000/- for every day of default. This provision for payment of fine has now been deleted as section 302(4) is deleted by the Amendment Act. This is because section 302(3) is amended to provide that the Tribunal shall forward the order to ROC, within 30 days, for

recording the details about dissolution of the company. The Tribunal can also direct the Liquidator to forward copy of this order to ROC for recording dissolution of the company.

2.47 PROSECUTION OF DILINQUENT OFFICERS AND MEMBERS OF COMPANY - (SECTION 342):

(Applicable w.e.f. 21st December, 2020)

Section 342(6) provides that if a person fails or neglects to give assistance required under section 342(5) he shall be liable to pay fine of Rs.25,000/- which may extend to Rs.1 Lakhs. This provision for levy of such fine is now deleted by amendment of this section.

2.48 DISPOSAL OF BOOKS AND PAPERS OF COMPANY – (SECTION 347):

(Applicable w.e.f. 21st December, 2020)

Section 347(4) provides that if any person acts in contravention of any Rule framed or an order made under section 347(3), he shall be punishable with imprisonment up to 6 months or with fine up to Rs.50,000/- or with both. By amendment of this section the provision for punishment by way of imprisonment up to 6 months is deleted.

2.49 INFORMATION AS TO PENDING LIQUIDATIONS - (SECTION 348):

(Applicable w.e.f. 21st December, 2020)

Section 348(6) provides that if a company Liquidator contravenes the provision of this section, he shall be punishable with fine up to Rs.5,000/- per day during which the default continues. Further, section 348(7) provides that if the company Liquidator makes willful default in causing the statement referred to in section 348(1) audited by a non-qualified person, he shall be punishable with imprisonment for term up to 6 months or with fine up to Rs.1 Lakh or with both. Section 348(6) is now replaced by a new Section 348(6) to provide that a company Liquidator who is an Insolvency Professional registered under the Insolvency and Bankruptcy Code is in default, then he shall be deemed to be in contravention of the provisions of the said Code and the Rules and Regulations under the said Code. In such a case, action may be taken under Chapter VI of Part IV of the said Code. The provision for imprisonment and fine under 348(7) has been deleted.

2.50 POWERS OF TRIBUNAL TO DECLARE DISSOLUTIONS OF COMPANY VOID- (SECTION 356):

(Applicable w.e.f. 21st December, 2020)

Under section 356(2) the Company Liquidator or the person on whose application, order for dissolution of the company is made by the Tribunal is required to file a certified copy of the order with the ROC within the specified time. In the event of default, fine up to Rs.10,000/-

per day of default is payable. This section is now amended and it is now provided that the Tribunal will forward a copy of the order to ROC. Further, the Tribunal may direct the Liquidator or the person who has made the application to file certified copy of the order with ROC. The provision for levy of fine is now deleted.

2.51 PRODUCER COMPANIES – (SECTION 378A TO 378ZU):

(Applicable w.e.f. 11th February, 2021)

A new Chapter XXIA is added consisting 47 sections viz. 378A to 378ZU dealing provisions relating to Producer Companies. A Producer Company is defined as a Body Corporate having as its objects such as production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of its members or import of goods or services for their benefit. Section 378B gives list of services which may be rendered by a Producer Company to its members. The entire Chapter XXIA is divided into 12 parts dealing with Incorporation, Management, General Meetings, Share Capital and Member's Rights, Finance, Accounts and audit, Loans to Members and Investments, Penalties, Amalgamations, Merger or Division, Resolution of Disputes, Re-conversion of Producer Company to Inter-State Co-operative Society and Miscellaneous Provisions. These provisions are, more or less, on the same lines as provisions for Producer Companies in Part IXA (Sections 581A to 581ZT) of the Companies Act, 1956. It may be noted that the above provisions of the companies Act, 1956 were in force even under the Companies Act, 2013, by virtue of the Savings Clause contained in Section 465.

2.52 PUNISHMENT FOR CONTRAVENTION – (SECTION 392):

(Applicable w.e.f. 21st December, 2020)

This section provides for punishment of a Foreign Company for contravention of the provisions of Chapter-XXII as under:

- (i) The Foreign Company is punishable with fine of Rs.1 Lakh which may extend to Rs.3 Lakhs. For continuing default, additional fine of Rs.50,000/- for every day of default is payable.
- (ii) Every officer of the Foreign Company who is in default is punishable with imprisonment up to a term of 6 months or with fine of Rs.25,000/- which may extend to Rs.5 Lakhs or with both. This provision of imprisonment is now deleted by

amendment of this section. Further, it is now provided that the fine shall be Rs.25000/- which may extend to Rs.5 Lakhs.

2.53 EXEMPTIONS UNDER CHAPTER XXII - (NEW SECTION 393A):

(Applicable w.e.f. 22nd January, 2021)

New section 393A grants power to the Central Government to notify exemptions from the provisions of Chapter XXII to any class of (i) Foreign Companies or (ii) Companies incorporated outside India which has or has not established a place of business in India. The Central Government has provided exemption to aforesaid companies from provisions of section 387 to 392 (both inclusive) w.e.f. 5th August, 2021. In view of this new section, similar power given by proviso to section 379 is now deleted.

2.54 ADDITIONAL FEE FOR FILING ETC. – (SECTION 403):

(Applicable w.e.f. 1st July, 2022)

At present, the third proviso to section 403(1) provides that if there is default on two or more occasions, higher additional fees, as may be prescribed will be payable. Such additional fees shall not be lesser than twice the additional fees provided in the First or Second Proviso. The amendment of the Third Proviso now provides that such additional fees shall be payable as may be prescribed which are not yet prescribed

Also, there were certain amendments to section 403(1) by The Companies Amendment Act, 2017 which are also made effective from 1st July, 2022.

2.55 POWER OF CENTRAL GOVERNMENT TO DIRECT COMPANIES TO FURNISH INFORMATION OR STATISTICS - (SECTION 405):

(Applicable w.e.f. 21st December, 2020)

Section 405(4) provides that for non-compliance with the provisions of section 405(1) or (3) or knowingly furnishing incorrect or incomplete information or statistics, the company is liable to pay fine up to Rs.25,000/- and every officer of the company in default is punishable with imprisonment up to 6 months or with fine of Rs.25,000/- which may extend to Rs.3 Lakhs or with both. This section is now amended and the provision for imprisonment of defaulting officer is deleted. Further, the Company and every officer in default will be liable to pay penalty of Rs.25,000/-. In case of continuing default a further penalty of Rs.1,000/- per day, subject to a maximum of Rs.3 Lakhs will be payable.

2.56 COMPOUNDING OF CERTAIN OFFENCES – (SECTION- 441):

(Applicable w.e.f. 21st December, 2020)

Section 441(5) provides that any officer or employee of the company who does not comply with any order made by the Tribunal, Regional Director or Authorized Officer shall be punishable with imprisonment for a term up to 6 months or with fine up to Rs.1 Lakh or with both. This section is now replaced by a new section 441(5) which provides that for the above default, the maximum amount of fine for the offence proposed to be compounded under this section shall be twice the amount provided by the corresponding section in which punishment for such offence is provided.

2.57 LESSER PENALTIES FOR CERTAIN COMPANIES – (SECTION 446B):

(Applicable w.e.f. 22nd January, 2021)

The existing section 446B which gives concession in penalty to One Person Companies and Small Companies has been replaced by a new section 446B. This concession is now extended to One Person Company, Small Company, Start-up Company and Producer Company. The new section provides that penalty payable by such companies or any of the defaulting officers etc. of such companies shall not be more than 50% of the penalty specified in various sections subject to a maximum of Rs.2 Lakhs in the case of the company and Rs.1 Lakh in the case of defaulting officers etc.

2.58 PUNISHMENT WHERE NO SPECIFIC PENALTY OR PUNISHMENT IS PROVIDED – (SECTION 450):

(Applicable w.e.f. 21st December, 2020)

At present, section 450 provides that for contravention of any of the provisions of the Act or the applicable Rules for which no penalty or punishment is provided elsewhere in the Act, the company and every officer or other person in default shall be punishable with fine up to Rs.10,000/-. For continuing default, a further fine up to Rs.1,000/- for every day during which the default continues shall be payable. This section is now amended to provide that for such contravention, the penalty of Rs.10,000/- shall be payable by the company and every officer or other person in default. For continuing default, further penalty of Rs.1,000/- for each day of default, subject to a maximum of Rs.2 Lakhs in the case of the company and Rs.50,000/- in the case of the officer or other person in default shall be payable.

2.59 PUNISHMENT FOR WRONGFUL WITHHOLDING OF PROPERTY - (SECTION 452):

(Applicable w.e.f. 22nd January, 2021)

Section 452 provides for levy of fine if any officer or employee of a company wrongfully obtains possession of any property of the company or wrongfully withholds such property. There is also a provision for prosecution and punishment by way of imprisonment. This section is now amended to provide that the Court shall not order imprisonment of the officer or employee if the Court is satisfied that the company has not paid to such person the amount relating to (a) Provident Fund, Pension Fund or any other fund for the welfare of the officers or employees or (b) Compensation or liability for Compensation under the Workmen's Compensation Act, 1923, in respect of death or disablement.

2.60 ADJUDICATION OF PENALTIES – (SECTION 454):

(Applicable w.e.f. 22nd January, 2021)

Section 454 provides that Adjudicating Officer can impose the penalty on the company or an Officer of the company or other person in default for non-compliance with the relevant provisions of the Act. He can direct such company or the officer to rectify the default. By amendment of this section it is now clarified that in respect of non-compliance with the provisions of section 92(4) dealing with "Annual Return" and section 137(2) dealing with "Filing of Financial Statements with ROC", if the default is rectified before issue of such notice by the Adjudicating Officer, no penalty shall be imposed and the matter shall be treated as concluded.

3. FINE V/S. PENALTY:

From some of the above amendments, it will be noticed that in some of the sections the word "Fine" is replaced by the word "Penalty". The distinction between these two terms is as under:

- (i) The punishment for contravention of the relevant provisions by way of levy of fine on the company or by way of imprisonment and/or fine on any defaulting Officer of the company can be levied only by Special Courts as provided in sections 435 to 446B.
- (ii) Section 454 provides that where any penalty is to be levied for contravention of the any provision of the Act on the company or any officer of the company, it can be levied by the Adjudicating Officer appointed by the Central Government. By a Notification, some Registrar of Companies are appointed as Adjudicating Officers. Appeal can be filed against

the penalty levied by such Adjudicating Officer before the Regional Director under section 454(5).

4. TO SUM UP:

- (i) In 2019, by the Companies (Amendment) Act, 2019, some amendments were made in the Companies Act, 2013, on the basis of the recommendations of a committee appointed by the Ministry of Corporate Affairs. In view of the constant efforts of the Government to facilitate greater ease of living to law abiding corporates, a Company Law Committee consisting representatives from Ministry, Industry, Chambers, Professional Institutes and Legal Faternity was constituted on 18.09.2019. This Committee submitted its report in November, 2019. The amendments made in 2020 are based on the above recommendations of the committee.
- (ii) It will be noticed from the above amendments that in some of the sections, provisions for punishment of officers of the company who are in default by way of imprisonment for specified period has been done away with. These sections deal with procedural lapses. In some sections, the provision for fine has been replaced by penalty. Since the fine can be levied by a Court and penalty can be levied by ROC, the litigation before Courts will be reduced to that extent.
- (iii) Taking an overall view, these amendments are welcome. However one area in which major amendments are needed relates to provisions relating to Private Limited Companies. As these companies are mostly family concerns and they find it difficult to comply with stringent provisions of the Act, there is an urgent need to simplify the law applicable to such companies.