



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT EXECUTIVE PROGRAMME (OLD SYLLABUS)

for

June, 2021 Examination

COMPANY LAW

MODULE 1

PAPER 1

Disclaimer: This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.

Index

S.NO.	Name of Lessons	Page No.
1	Lesson 3- Promotion and Incorporation of Companies	3-4
2	Lesson 6- Concept of Capital & Financing of Companies	5
3	Lesson 7- Alteration of Share Capital	6-7
4	Lesson 8 – Private Placement and Prospectus	8
5	Lesson 9- Debt Capital	9
6	Lesson 10-Creation and Registration of Charges	10
7	Lesson 12-Membership in a Company	11
8	Lesson 13- Transfer and Transmission of securities	12
9	Lesson 14-Institution of Directors	13
10	Lesson 15- Independent Directors	14-15
11	Lesson 16- Board and its Powers	16-17
12	Lesson 19-Loans and Investments by Companies	18
13	Lesson 20-Deposits	19
14	Lesson 21- Lesson 21-Accounts and Audit	20-23
15	Lesson 23-Board's Report and its Disclosures	24
16	Lesson 24 Registers, Forms and Returns	25-26
17	Lesson 26-Majority Rule and Minority Rights	27
18	Lesson 27- Merger, De-Merger, Amalgamation, Compromise and Arrangements – An Overview	28-30
19	Lesson 31- Offences, Penalties and their Compounding	31-44

- **The Companies (Amendment) Act, 2020**

The Companies (Amendment) Act, 2020 got the assent of Hon'ble President of India as on September 28, 2020. It was passed by the Lok Sabha on September 19, 2020 and by the Rajya Sabha on September 22, 2020.

For details: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_2992020.pdf

- **Notification No. S.O. 4646(E), MCA Notifies Commencement Date of Various Sections of Companies Amendment Act, 2020, Dated December 21, 2020**

The MCA has notified **December 21, 2020** as commencement date for specified sections of the Companies (Amendment) Act, 2020

For details: <http://egazette.nic.in/WriteReadData/2020/223873.pdf>

Lesson 3- Promotion and Incorporation of Companies

1) SPICe+ applications approved for the State of Karnataka w.e.f. October 08, 2020 shall mandatorily provide Profession Tax Registration also.

As part of Government of India's Ease of Doing Business (EODB) initiatives, the MCA has integrated with Profession Tax [PT] – Karnataka.

SPICe+ applications approved for the State of Karnataka w.e.f. October 08, 2020 shall mandatorily provide Profession Tax Registration also.

For more details: <http://www.mca.gov.in/MinistryV2/homepage.html>

http://www.mca.gov.in/Ministry/pdf/SpicePlusFAQS_20112020.pdf

2) Notification No. G.S.R. 795(E). The Companies (Incorporation) Third Amendment Rules, 2020, dated December 24, 2020

In the Companies (Incorporation) Rules, 2014, after rule 9, the following rule shall be inserted with effect from January 26, 2021, namely: -

“9A. Extension of reservation of name in certain cases –

Upon payment of fees provided below through the web service available at www.mca.gov.in, the Registrar shall extend the period of a name reserved under rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), upto:

(a) forty days from the date of approval under rule 9, on payment of fees of ₹ 1000 made before the expiry of twenty days from the date of approval under rule 9;

(b) sixty days from the date of approval under rule 9 on payment of fees of ₹ 2000 made before the expiry of forty days referred to in clause (a) above;

(c) sixty days from the date of approval under rule 9 on payment of fees of ₹ 3000 made before the expiry of twenty days from the date of approval under rule 9.

Further, the Registrar shall have the power to cancel the reserved name in accordance with Section 4(5) of the Companies Act, 2013.

For details: http://www.mca.gov.in/Ministry/pdf/ThirdAmdtRules_06012021.pdf

3) Section 3 of the Companies (Amendment) Act, 2020 amends Section 8(11) of the Companies Act, 2013 w.r.t. Formation of companies with charitable objects, etc., - “Decriminalization of offence”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Old Penal Provision

If a company makes any default in complying with any of the requirements laid down in Section 8 of the Companies Act, 2013, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ₹ 10 lakhs but which may extend to ₹1 crore and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than ₹ 25000 but which may extend to ₹ 25 lakhs or with both.

New Penal Provision

If a company makes any default in complying with any of the requirements laid down in section 8 of the Companies Act, 2013, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ₹ 10 lakhs but which may extend to ₹1 crore and the directors and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 25000 but which may extend to ₹ 25 lakhs.

Details of change:

Omission of imprisonment w.r.t. Director and every officer of the company who is in default in complying with the requirements relating to formation of companies with charitable objects, etc.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

4) Section 46 of the Companies (Amendment) Act, 2020 amends Section 284(2) of the Companies Act, 2013 w.r.t. Promoters, Directors, etc., to Cooperate with Company Liquidator. “Relaxation of penal provision”--Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)”

Section 284(2)

Old Penal Provision

Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1) of Section 284, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to ₹ 50,000, or with both.

New Penal Provision

If any person required to assist or cooperate with the Company Liquidator under Section 284 (1) of the Companies Act, 2013 does not assist or cooperate, the Company Liquidator may make an application to the Tribunal for necessary directions.

On receiving an application under Section 284 (2) as mentioned above, the Tribunal shall, by an order, direct the person required to assist or cooperate with the Company Liquidator to comply with the instructions of the Company Liquidator and to cooperate with him in discharging his functions and duties.

Details of Changes

The penal provisions for non-compliance of Section 284(1) of the Companies Act, 2013 are relaxed and Company Liquidator has been entrusted with the power of making an application to the Tribunal for necessary directions.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 6- Concept of Capital & Financing of Companies

E-Form PAS-6 [Reconciliation of Share Capital Audit Report (Half-Yearly)] has been notified by MCA and is available for filing w.e.f. July 15, 2020 by unlisted public companies issuing securities.

Every unlisted public company governed by Rule-9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (i.e. relating to issue of securities in dematerialised form by unlisted public companies) is required to submit E-Form PAS-6 w.r.t. Reconciliation of Share Capital Audit Report (Half-Yearly) to the Registrar of Companies with such fee as prescribed within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

For details: <http://www.mca.gov.in/MinistryV2/companyformsdownload.html>

Lesson 7- Alteration of Share Capital

1) Notification No: G.S.R. 794(E).—The Companies (Share Capital and Debentures) Second Amendment Rules, 2020 (December 24, 2020)

New Form SH-7 pertaining to the notice to the Registrar of Companies of any alteration of share capital has been notified in place of existing Form SH-7.

For details: http://www.mca.gov.in/Ministry/pdf/SecondAmdtRules_06012021.pdf

2) Section 12 of the Companies (Amendment) Act, 2020 amends Section 64(2) of the Companies Act, 2013 w.r.t. Notice to be given to Registrar for Alteration of Share Capital- “Reduction of penalty / Fixation of maximum amount of penalty”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 64(2)

Old Penal Provision

Where any company fails to comply with the provisions of Section 64(1) of the Companies Act, 2013, such company and every officer who is in default shall be liable to a penalty of ₹1000 for each day during which such default continues, or ₹ 5 lakhs whichever is less.

New Penal Provision

Where any company fails to comply with the provisions of Section 64(1) of the Companies Act, 2013, such company and every officer who is in default shall be liable to a penalty of ₹ 500 for each day during which default continues subject to a maximum of ₹ 5 lakhs in case of a company and ₹ 1 lakh in case of an officer who is in default.

Details of Changes

Reduction in the amount of monetary penalty as well as fixation of maximum amount of penalty both in case of a company and every officer of the company who is in default in filing the notice of alteration or increase or redemption of the capital, as the case may be, along with an altered memorandum of the company with the Registrar of Companies within a period of 30 days.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

3) Section 14 of the Companies (Amendment) Act, 2020 amended Section 68(11) of the Companies Act, 2013 w.r.t. Power of Company to Purchase its Own Securities i.e. buy back — “Decriminalisation of offences”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 68(11)

Old Penal Provision

If a company makes any default in complying with the provisions of Section 68 of the Companies Act, 2013 or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of Section 68 (2), the company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 3 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 3 lakhs or both.

New Penal Provision

If a company makes any default in complying with the provisions of Section 68 of the Companies Act, 2013 or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of Section 68 (2), the company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 3 lakhs and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 3 lakhs.

Details of Changes

Removal of Imprisonment for Non-compliance of buyback provisions.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 8 – Private Placement and Prospectus

1) The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020 (Notification No: G.S.R. 642(E)-, Dated October 16, 2020) - Amendment relating to Private Placement to QIBs

Rule 14(1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 states that a company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations.

The MCA vide its notification dated October 16, 2020 has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020 to further amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, providing relaxation to QIBs also along with the existing relaxation available in case of offer or invitation for Non-convertible debentures.

In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in rule 14 (1), after third proviso, the following proviso shall be inserted, namely: - “Provided also that in case of offer or invitation of any securities to qualified institutional buyers, it shall be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyers during the year.”

Details of Changes

Private Placement norms are being eased w.r.t. the offer or invitation of any securities made to Qualified Institutional Buyers. With this amendment, it shall be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyers during the year.

For details: <http://egazette.nic.in/WriteReadData/2020/222511.pdf>

2) Section 6 of the Companies (Amendment) Act, 2020 amends Section 26(9) of the Companies Act, 2013 w.r.t. Matters to be stated in prospectus — “Decriminalisation of offences”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 26(9)

Old Penal Provision

If a prospectus is issued in contravention of the provisions of Section 26 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs or both.

New Penal Provision

If a prospectus is issued in contravention of the provisions of Section 26 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs and every person who is knowingly a party to the issue of such prospectus shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs.

Details of Changes

Omission of imprisonment w.r.t. every person who is knowingly a party to the issue of such prospectus which has contravened the provisions of Section 26 of the Companies Act, 2013.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 9- Debt Capital

Section 15 of the Companies (Amendment) Act, 2020 omitted Section 71 (11) of the Companies Act, 2013 w.r.t. Debentures- “Penal provisions omitted”-Notification dated September 28, 2020 .(Amendment Effective from December 21, 2020)

Section 71 (11)

Old Penal Provision

If any default is made in complying with the order of the Tribunal under Section 71 of the Companies Act, 2013, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than ₹ 2 lakhs but which may extend to ₹ 5 lakhs, or with both.

Details of Changes

Section 71 (11) of the Companies Act, 2013 pertaining to penal provisions for default in complying with any order of Tribunal under Section 71 of the Companies Act, 2013 has been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 10 Creation and Registration of Charges

Section 16 of the Companies (Amendment) Act, 2020 amended Section 86 (1) of the Companies Act, 2013 w.r.t. Punishment for Contravention of provisions relating to registration of charges- “Decriminalization of offences”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 86(1)

Old Penal Provision

If any company contravenes any provision of Chapter VI of the Companies Act, 2013 w.r.t. Registration of Charges, the company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 10 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹ 25000 but which may extend to ₹ 1 lakh, or with both.

New Penal Provision

If any company is in default in complying with any of the provisions of Chapter VI of the Companies Act, 2013 w.r.t. Registration of Charges, the company shall be liable to a penalty of ₹ 5 lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 50000.

Details of changes

Fixed penalty in case of company and officer in default and removal of imprisonment in case of officer in default.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 12-Membership in a Company

1)Section 10 of the Companies (Amendment) Act, 2020 omitted Section 59(5) of the Companies Act, 2013 w.r.t. Rectification of Register of Members –“Penal provisions omitted”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 59(5)

Old Penal Provision

If any default is made in complying with the order of the Tribunal under Section 59 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 3 lakhs, or with both.

Details of changes:

Section 59(5) of the Companies Act, 2013 w.r.t. penal provisions for default in complying with the order of NCLT relating to rectification of register of members has been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

2) Section 17 of the Companies (Amendment) Act, 2020 amended Section 88 (5) of the Companies Act, 2013 w.r.t. Register of Members- “Fixation of Penalty”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 88 (5)

Old Penal Provision

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2) of Section 88 of the Companies Act, 2013, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 3 lakhs and where the failure is a continuing one, with a further fine which may extend to ₹ 1000 for every day, after the first during which the failure continues.

New Penal Provision

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2) of Section 88 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 3 lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 50,000.

Details of changes:

The penalty amount for non-maintenance of register of members or debenture-holders or other security holders has been fixed for the company and penalty amount for officer in default along with continuing penalty is reduced.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 13- Transfer and Transmission of Securities

Section 9 of the Companies (Amendment) Act, 2020 amended Section 56(6) of the Companies Act, 2013 w.r.t. Transfer and Transmission of Securities – “Fixation of Penalty”- Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 56(6)

Old Penal Provision

Where any default is made in complying with the provisions of sub-sections (1) to (5) of Section 56 of the Companies Act, 2013 w.r.t. provisions of the Transfer and Transmission of Securities, the company shall be punishable with fine which shall not be less than ₹ 25000 but which may extend to ₹ 5 lakh and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 1 lakh.

New Penal Provision

Where any default is made in complying with the provisions of sub-sections (1) to (5) of Section 56 of the Companies Act, 2013 w.r.t. the provisions of Transfer and Transmission of Securities, the company and every officer of the company who is in default shall be liable to a penalty of ₹ 50000.

Details of Changes:

The penalty amount w.r.t. Default made in complying with the provisions of Transfer and Transmission of Securities has been fixed replacing the fine.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 14-Institution of Directors

Section 34 of the Companies (Amendment) Act, 2020 amends Section 167(2) of the Companies Act, 2013 w.r.t. Vacation of Office of Director-“Decriminalization of offences” -Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 167(2)

Old Penal Provision

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1) of Section 167 of the Companies Act, 2013, he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 Lakhs, or with both.

New Penal Provision

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1) of Section 167 of the Companies Act, 2013, he shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 Lakhs.

Details of Changes

Omission of Imprisonment w.r.t. A person, functioning as a director even after knowing that the office of director held by him has become vacant on account of any of the disqualifications specified in Section 167(1) of Companies Act, 2013.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 15- Independent Directors

1) Notification No: G.S.R. 589(E), The Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2020, Dated September 28, 2020

The MCA has notified the Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2020 to further amend the provision of Rule 6 (1), clause (a), of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Details of Changes

With this Amendment, the time period for applying online to the Indian Institute of Corporate Affairs for inclusion of name in the data bank by every existing Independent Director has been further extended from 10 months to 13 months from the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 (i.e. from December 01,2019). Hence, the time limit for registration in independent director data bank extended till December 31, 2020.

For details: http://www.mca.gov.in/Ministry/pdf/FourthAmendmentRules_29092020.pdf

2) Notification No. G.S.R. 774(E), The Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2020, Dated, December 18, 2020

The MCA vide notification dated December 18, 2020 has notified the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2020 to further amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

Rule 6 of The Companies (Appointment and Qualification of Directors) Rules, 2014, pertaining to compliances required by a person eligible and willing to be appointed as an independent director has been amended as follows:-

In Rule 6(4) of the Companies (Appointment and Qualification of Directors) Rules, 2014 for the words:

"one year from"

the following shall be substituted namely

"two years from"

Revised Rule 6(4)

Every individual whose name is so included in the data bank under Rule 6(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall pass an online proficiency self-assessment test conducted by the Indian Institute of Corporate Affairs within a period of two years from (earlier one year from) the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute.

(ii) For the first and second proviso of Rule 6(4) of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following provisos shall be substituted, namely: -

"Provided that an individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank,-

(A) as director or key managerial personnel, as on the date of inclusion of his name in the databank, in one or more of the following, namely: -

(a) listed public company; or

(b) unlisted public company having a paid-up share capital of rupees 10 crore or more; or

(c) body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions; or

(d) bodies corporate incorporated outside India having a paid-up share capital of US\$ 2 million or more; or

(e) statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or

(B) in the pay scale of Director or above in the Ministry of Corporate Affairs or the Ministry of Finance or Ministry of Commerce and Industry or the Ministry of Heavy Industries and Public Enterprises and having experience in handling the matters relating to corporate laws or securities laws or economic laws; or

(C) in the pay scale of Chief General Manager or above in the Securities and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Development Authority of India or the Pension Fund Regulatory and Development Authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws:

Provided further that for the purpose of calculation of the period of three years referred to in the first proviso, any period during which an individual was acting as director or as key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.

in the Explanation, in item (b), for the word's "sixty percent", the words "fifty percent" shall be substituted.

Details of Changes

The eligibility criteria for exemption from online proficiency self-assessment test has been broadened. Now, an individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than 3 years (previously it was 10 years) as on the date of inclusion of his name in the data bank as Director or KMP in prescribed companies, body corporates, selected ministries or regulatory authorities.

Exam passing percentage is also reduced to 50% from 60%.

For details: http://www.mca.gov.in/Ministry/pdf/FifthAmdtRules_18122020.pdf

Lesson 16- Board and its Powers

1) Section 36 of the Companies (Amendment) Act, 2020 amends Section 178(8) of the Companies Act, 2013 w.r.t. Nomination and Remuneration Committee and Stakeholders Relationship Committee-“Decriminalization of offences”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 178(8)

Old Penal Provision

In case of any contravention of the provisions of section 177 and section 178 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹25,000 but which may extend to ₹ 1Lakh , or with both.

New Penal Provision

In case of any contravention of the provisions of section 177 and section 178 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 5 Lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 1 Lakh.

Details of Changes

The Penalty for contravention of provision of Section 177(Audit Committee) and 178(Nomination and Remuneration Committee and Stakeholders Relationship Committee) of the Companies Act, 2013, has been fixed and punishment of imprisonment has been removed.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

2) Section 39 of the Companies (Amendment) Act, 2020 amends Section 188(5) of the Companies Act, 2013 w.r.t. Related Party Transactions - “Decriminalization of offence”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 188(5)

Old Penal Provision

Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of section 188 of Companies Act, 2013, shall, —

- (i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less ₹ 25,000 than but which may extend to ₹ 5 Lakhs, or with both; and
- (ii) In case of any other company, be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs.

New Penal Provision

Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of section 188 of Companies Act, 2013, shall, —

- (i) in case of listed company, be liable to a penalty of ₹ 25 Lakhs; and
- (ii) In case of any other company, be liable to a penalty of ₹ 5 Lakhs.

Details of Changes

The penalty amount w.r.t. to any director or any other employee of a company, who has entered into or authorised the contract or arrangement in violation of the provisions of section 188 of Companies

Act, 2013, has been fixed in case of listed company or any other company and the punishment by way of imprisonment has been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 19-Loans and Investments by Companies

Section 38 of the Companies (Amendment) Act, 2020 amends Section 187(4) of the Companies Act, 2013 w.r.t. Investment of Company to be held in its Own Name-“Decriminalization of offence” -Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 187(4)

Old Penal Provision

If a company contravenes the provisions of section 187 of Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 25 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1 lakh, or with both.

New Penal Provision

If a company is in default in complying with the provisions of section 187 of Companies Act, 2013, the company shall be liable to a penalty of ₹ 5 lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 50,000.

Details of Changes

The Penalty amount w.r.t default in compliance with the provisions of section 187 of Companies Act, 2013, related to Investment by the Company in its own name has been fixed and the punishment by way of imprisonment has been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 20- Deposits

The Companies (Acceptance of Deposits) Amendment Rules, 2020, dated September 07, 2020

i) The MCA has notified the Companies (Acceptance of Deposits) Amendment Rules, 2020 to further amend the Companies (Acceptance of Deposits) Rules, 2014, amending Rule 2(1)(c) (xvii), pertaining to definition of deposits.

Amended Rule 2(1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014 provided that an amount of ₹ 25 lakhs or more received by a Start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding 10 years (earlier 5 years) from the date of issue) in a single tranche, from a person won't be considered as deposit.

Explanation-I of the above rule, provides that "start-up company" means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.

ii) The Companies (Acceptance of Deposits) Amendment Rules, 2020 further amended Rule 3, sub-rule (3), second proviso, clause (i) of the Companies (Acceptance of Deposits) Rules, 2014, w.r.t. Terms and Conditions of Acceptance of Deposits from members by a Start-up Company.

Amended Rule 3(3), second proviso, clause (i) of the Companies (Acceptance of Deposits) Rules, 2014, provides that the maximum limit in respect of deposits to be accepted from members is not applicable to a private company which is a Start-up for 10 years (earlier 5 years) from date of its incorporation.

Now, a private company which is a Start-up would be able to accept deposits from its members without any limit for 10 years from the date of its incorporation.

For more details: http://www.mca.gov.in/Ministry/pdf/Rule_08092020.pdf

Lesson 21-Accounts and Audit

1) Notification No: G.S.R. 525 (E) Amendment in item no. (ix) of the Schedule VII of the Companies Act, 2013, dated August 24, 2020

In Schedule VII of the Companies Act, 2013, for item (ix) and the entries thereto, the following item and entries shall be substituted, namely:-

“(ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defence Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)”.

Details of Changes

MCA vide Notification dated August 24, 2020 has widened the scope of CSR Activities by amending item (ix) of the Schedule VII of the Companies Act 2013 to include more entities like Ministry of AYUSH etc., engaged in research and development to whom contribution shall be treated as Contribution for Corporate Social Responsibility (CSR) Activities as required under Section 135 of Companies Act, 2013.

For details: http://www.mca.gov.in/Ministry/pdf/NotificationCompAct_26082020.pdf

2) Notification No: G.S.R. 526(E)- The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020, dated August 24, 2020

MCA vide Notification No.: G.S.R. 526(E), dated August 24, 2020 has notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 to further amend the Companies (Corporate Social Responsibility Policy) Rules, 2014

1) In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 2, in sub-rule (1), in clause (e), the following proviso shall be inserted in the definition of “CSR Policy”, namely:

-

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that:

(i) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII of the Companies Act, 2013.

(ii) details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report.

2) In rule 4(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the words “excluding activities undertaken in pursuance of its normal course of business” shall be omitted.

3) In rule 6(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014-

(i) first proviso shall be omitted;

(ii) In the second proviso, the word “further” shall be omitted.

Details of Changes

MCA vide this amendment has notified that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the prescribed conditions.

Further, it has omitted the phrase “excluding activities undertaken in pursuance of its normal course of business” from Rule 4 and 6 of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

For details: http://www.mca.gov.in/Ministry/pdf/csr_26082020.pdf

3) Notification No: S.O. 4588(E) The Companies (Auditor’s Report) Second Amendment Order, 2020, dated December 17, 2020

The MCA vide order dated December 17, 2020 has issued the Companies (Auditor’s Report) Second Amendment Order, 2020. The order has further deferred the applicability of the Companies (Auditor’s Report) Order (CARO) 2020, by one year.

So, Companies (Auditor’s Report) Order, 2020 (CARO 2020) will be applicable for the financial years commencing on or after the 1st April, 2021.

For details: http://www.mca.gov.in/Ministry/pdf/CompaniesSecondAmdtOrder_22122020.pdf

4) Section 24 of the Companies (Amendment) Act, 2020 amended Section 128(6) of the Companies Act, 2013 w.r.t. Books of Account, etc., to be kept by Company-“Decriminalisation of offences”- Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 128(6)

Old Penal Provision

If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of Section 128 of the Companies Act, 2013, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial Officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 50000 but which may extend to ₹ 5 Lakhs or with both.

New Penal Provision

If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of

Section 128 of the Companies Act, 2013, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial Officer or such other person of the company shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹ 5 Lakhs.

Details of Changes

Omission of imprisonment w.r.t. contravention of provisions of Section 128 of the Companies Act, 2013 by the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

5) Section 31 of the Companies (Amendment) Act, 2020 amends Section 147 (1) and (2) of the Companies Act, 2013 w.r.t. Punishment for Contravention of the provisions related to Audit and Auditors-“Decriminalization of offence”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

(i) Section 147 (1)

Old Penal Provision

If any of the provisions of sections 139 to 146 (both inclusive) of the Companies Act, 2013 is contravened, the company shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 1 Lakh, or with both.

New Penal provision

If any of the provisions of sections 139 to 146 (both inclusive) of the Companies Act, 2013 is contravened, the company shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 1 Lakh.

Details of Changes

Omission of Imprisonment w.r.t. every officer of the company who is in default for contravention of the provisions of Sections 139 to 146(both inclusive) of the Companies Act, 2013.

(ii) Section 147(2)

Old Penal Provision

If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145 of the Companies Act, 2013, the auditor shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs or four times the remuneration of the auditor, whichever is less.

New Penal Provision

If an auditor of a company contravenes any of the provisions of section 139, section 144 or section 145 of the Companies Act, 2013, the auditor shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs or four times the remuneration of the auditor, whichever is less.

Details of Changes

Penalty under this section for contravention of provision of Section 143 related to Powers and Duties of Auditors and Auditing Standards has been removed.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 23-Board's Report and its Disclosures

1) The Companies (Management and Administration) Amendment Rules, 2020, Dated August 28, 2020

The MCA has notified the Companies (Management and Administration) Amendment Rules, 2020 to further amend the Companies (Management and Administration) Rules, 2014.

In Rule 12(1) of the Companies (Management and Administration) Rules, 2014, a proviso has been inserted, specifying that the companies are not required to attach the extract of Annual Return with the Board's report in Form No. MGT.9, in case the web link of such Annual Return has been disclosed in the Board's report in accordance with Section 92(3) of the Companies Act, 2013.

For more details: http://www.mca.gov.in/Ministry/pdf/Rule_29082020.pdf

Lesson 24 Registers, Forms and Returns

1) Commencement Notification of clause (ii) of section 23 of the Companies (Amendment) Act, 2017 w.r.t. amendment to Section 92(3) of the Companies Act, 2013, Dated August 28, 2020

The MCA has notified the provision of clause (ii) of section 23 of the Companies (Amendment) Act, 2017 related to amendment to Section 92(3) of the Companies Act, 2013 w.e.f. from August 28, 2020.

The amendment provides that every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.

For details: http://www.mca.gov.in/Ministry/pdf/NotificationCompAct_29082020.pdf

2) Section 19 of the Companies (Amendment) Act, 2020 amended Section 90 (10) & (11) of the Companies Act, 2013 w.r.t. Register of Significant Beneficial Owners in a company- "Decriminalisation of offences" - Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

(i) Section 90 (10)

Old Penal Provision

If any person fails to make a declaration as required under Section 90 (1) of the Companies Act, 2013, he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹10 Lakhs or with both and where the failure is a continuing one, with a further fine which may extend to ₹ 1000 for every day after the first during which the failure continues.

New Penal Provision

If any person fails to make a declaration as required under Section 90 (1) of the Companies Act, 2013, he shall be liable to a penalty of ₹ 50000 and in case of continuing failure, with a further penalty of ₹ 1000 for each day after the first during which such failure continues, subject to a maximum of ₹ 2 Lakhs.

Details of changes

Provision of Imprisonment has been omitted and Penalty in place of fine for default in declaration of significant beneficial ownership in the company has been substituted.

(ii) Section 90(11)

Old Penal Provision

If a company, required to maintain register under Section 90 (2) and file the information under Section 90(4) or required to take necessary steps under Section 90 (4A) of the Companies Act, 2013, fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 10 Lakhs but which may extend to ₹ 50 Lakhs and where the failure is a continuing one, with a further fine which may extend to ₹ 1000 for every day after the first during which the failure continues.

New Penal Provision

If a company, required to maintain register under Section 90 (2) and file the information under Section 90(4) or required to take necessary steps under Section 90 (4A) of the Companies Act, 2013, fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of ₹ 1 Lakh and in case of continuing failure, with a further penalty of ₹ 500 for each day, after the first during which such

failure continues, subject to a maximum of ₹ 5 Lakhs and every officer of the company who is in default shall be liable to a penalty of ₹25000 and in case of continuing failure, with a further penalty of ₹ 200 for each day, after the first during which such failure continues, subject to a maximum of ₹ 1 Lakh.

Details of changes

Reduced penalty is substituted for a company, required to maintain register or file the information or required to take necessary steps under Section 90 of the Companies Act, 2013, fails to do so or denies inspection as provided therein.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 26-Majority Rule and Minority Rights

1) Section 43 of the Companies (Amendment) Act, 2020 amends Section 242(8) of the Companies Act, 2013 w.r.t. Powers of Tribunal- “Decriminalization of offence”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 242(8)

Old Penal Provision

If a company contravenes the provisions of Section 242 (5) of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 25 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1 lakh, or with both.

New Penal Provision

If a company contravenes the provisions of Section 242(5) of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 25 lakhs and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1 lakh.

Details of Changes

The Penal provisions for non-compliance of Section 242(5) of Companies Act, 2013, which is related to alteration in Memorandum or Articles of the Company which is inconsistent with the order of the Tribunal under section 242(1) of the Companies Act, 2013, is relaxed by omitting punishment by way of imprisonment.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

2) Section 44 of the Companies (Amendment) Act, 2020 amends Section 243(2) of the Companies Act, 2013 w.r.t. Consequence of Termination or Modification of Certain Agreements- “Decriminalization of offence”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 243(2)

Old Penal Provision

Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A) of Section 243 of the Companies Act, 2013, and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ₹ 5 lakhs, or with both.

New Penal Provision

Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A) of Section 243 of the Companies Act, 2013, and every other director of the company who is knowingly a party to such contravention, shall be punishable with fine which may extend to ₹ 5 lakhs.

Details of Changes

The Penal provisions for non-compliance of Section 243(1)(b) or Section 243(1A) of the Companies Act, 2013 is relaxed by omitting punishment by way of imprisonment.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 27- Merger, De-Merger, Amalgamation, Compromise and Arrangements – An Overview

1) Notification No: G.S.R. 773(E)- The Companies (Compromises, Arrangements and Amalgamations) Second Amendment Rules, 2020, Dated December 17, 2020

The MCA has notified the Companies (Compromises, Arrangements and Amalgamations) Second Amendment Rules, 2020 to further amend the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- In the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, in rule 2, in sub-rule (1), after clause (d), the following clause pertaining to definitions is inserted, namely:

-

"(e) "corporate action" means any action taken by the company relating to transfer of shares and all the benefits accruing on such shares namely, bonus shares, split, consolidation, fraction shares and right issue to the acquirer".

- In the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, after rule 26, the following rule shall be inserted namely: -

"26 A. Purchase of minority shareholding held in demat form.

(1) The company shall within two weeks from the date of receipt of the amount equal to the price of shares to be acquired by the acquirer, under Section 236 of the Companies Act, 2013 verify the details of the minority shareholders holding shares in dematerialised form.

(2) After verification, the company shall send notice to such minority shareholders by registered post or by speed post or by courier or by email about a cut-off date, which shall not be earlier than one month after the date of sending of the notice, on which the shares of minority shareholders shall be debited from their account and credited to the designated DEMAT account of the company, unless the shares are credited in the account of the acquirer, as specified in such notice, before the cut-off date.

(3) A copy of the notice served to the minority shareholders shall also be published simultaneously in two widely circulated newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situated and also be uploaded on the website of the company, if any.

(4) The company shall inform the depository immediately after publication of the notice under sub-rule (3) regarding the cut-off date and submit the following declarations stating that:-

(a) the corporate action is being effected in pursuance of the provisions of section 236 of the Companies Act, 2013;

(b) the minority shareholders whose shares are held in dematerialised form have been informed about the corporate action [a copy of the notice served to such shareholders and published in the newspapers to be attached];

(c) the minority shareholders shall be paid by the company immediately after completion of corporate action;

(d) any dispute or complaints arising out of such corporate action shall be the sole responsibility of the company.

(4) For the purposes of effecting transfer of shares through corporate action, the Board shall authorise the Company Secretary, or in his absence any other person, to inform the depository and to submit the documents as may be required.

(5) Upon receipt of information, the depository shall make the transfer of shares of the minority shareholders, who have not, on their own, transferred their shares in favour of the acquirer, into the designated DEMAT account of the company on the cut-off date and intimate the company.

(3) After receiving the intimation of successful transfer of shares from the depository, the company shall immediately disburse the price of the shares so transferred, to each of the minority shareholders after deducting the applicable stamp duty, which shall be paid by the company, on behalf of the minority shareholders, in accordance with the provisions of the Indian Stamp Act, 1899.

(4) Upon successful payment to the minority shareholders, the company shall inform the depository to transfer the shares of such shareholders, kept in the designated DEMAT account of the company, to the DEMAT account of the acquirer.

Explanation. – The company shall continue to disburse payment to the entitled shareholders, where disbursement could not be made within the specified time, and transfer the shares to the DEMAT account of acquirer after such disbursement.

(9) In case, where there is a specific order of Court or Tribunal, or statutory authority restraining any transfer of such shares and payment of dividend, or where such shares are pledged or hypothecated under the provisions of the Depositories Act, 1996 (22 of 1996), the depository shall not transfer the shares of the minority shareholders to the designated DEMAT account of the company.

Explanation. – For the purposes of this rule, if “cut-off date” falls on a holiday, the next working day shall be deemed to be the “cut-off date”.

For details: http://www.mca.gov.in/Ministry/pdf/SecondAmdtRules_18122020.pdf

2) Section 42 of the Companies (Amendment) Act, 2020 amends Section 232(8) of the Companies Act, 2013 w.r.t. Mergers and Amalgamations of Companies-“Decriminalization of offence”- Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 232(8)

Old Penal Provisions

If a transferor company or a transferee company contravenes the provisions of section 232 of the Companies Act, 2013, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 25 lakhs and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 3 lakhs, or with both.

New Penal Provisions

If a company fails to comply with sub-section (5) of Section 232 of the Companies Act, 2013, the company and every officer of the company who is in default shall be liable to a penalty of ₹ 25,000, and where the failure is a continuing one, with a further penalty of ₹ 1000 for each day after the first during which such failure continues, subject to a maximum of ₹ 3 lakhs.

Details of Changes

Uniformed the amount of penalty amount for company and every officer of the company who has defaulted in complying with the provisions of section 232 (5) of the Companies Act, 2013 related to filing of certified copy of the order of Tribunal with Registrar of Companies for registration. Further the maximum limit of penalty for non-compliance has been reduced.

The provision of Imprisonment for officer in default has also been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 31- Offences, Penalties and their Compounding

1) Section 7 of the Companies (Amendment) Act, 2020 amends Section 40(5) of the Companies Act, 2013 w.r.t. Securities to be dealt with in Stock Exchanges— “Decriminalisation of offences”- Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 40(5)

Old Penal Provision

If a default is made in complying with the provisions of Section 40 of the Companies Act, 2013, the company shall be punishable with a fine which shall not be less than ₹ 5 lakhs but which may extend to ₹ 50 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 3 lakhs, or with both.

New Penal Provision

If a default is made in complying with the provisions of Section 40 of the Companies Act, 2013, the company shall be punishable with a fine which shall not be less than ₹ 5 lakhs but which may extend to ₹ 50 lakhs and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 3 lakhs.

Details of Changes

Omission of imprisonment w.r.t. every officer of the company who is in default in complying with the provisions of Section 40 of the Companies Act, 2013 in relation to securities to be dealt with in stock exchanges.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

2) Section 8 of the Companies (Amendment) Act, 2020 omitted Section 48(5) of the Companies Act, 2013 w.r.t. Variation of Shareholders' Rights- “Penal provisions omitted”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 48(5)

Old Penal Provisions

Where any default is made in complying with the provisions of Section 48 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 25000 but which may extend to ₹ 5 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹ 25000 but which may extend to ₹ 5 Lakhs, or with both

Details of Changes:

Section 48(5) w.r.t. Penal provisions for default in complying with the provisions of Section 48 of the Companies Act, 2013 relating to variation of shareholders' rights has been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

3) Section 13 of the Companies (Amendment) Act, 2020 omitted Section 66(11) of the Companies Act, 2013 w.r.t. Reduction of Share Capital “Decriminalisation of offences”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 66(11)

Old Penal Provision

If a company fails to comply with the provisions of Section 66 (4) of the Companies Act, 2013, it shall be punishable with fine which shall not be less than ₹ 5 lakhs but which may extend to ₹ 25 lakhs.

Section 66(4) of the Companies Act 2013 reads as under:

The order of confirmation of the reduction of share capital by the Tribunal under section 66 (3) shall be published by the company in such manner as the Tribunal may direct.

Details of Changes

Section 66(11) of the Companies Act, 2013 pertaining to the penal provisions for default by the company in publishing the confirmation order of the reduction of share capital by the Tribunal has been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

4) Section 18 (a) and (b) of the Companies (Amendment) Act, 2020 amended Section 89 (5) & (7) of the Companies Act, 2013 w.r.t. Declaration in Respect of Beneficial Interest in any Share-“Decriminalization of offence”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

(i) Section 89(5)

Old Penal Provision

If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3) of Section 89 of the Companies Act, 2013, without any reasonable cause, he shall be punishable with fine which may extend to ₹ 50,000 and where the failure is a continuing one, with a further fine which may extend to ₹ 1000 for every day after the first during which the failure continues.

New Penal Provision

If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3) of Section 89 of the Companies Act, 2013, he shall be liable to a penalty of ₹ 50,000 and in case of continuing failure, with a further penalty of ₹200 for each day after the first during which such failure continues, subject to a maximum of ₹ 5 Lakhs.

Details of changes:

Penalty in place of fine has been substituted for default in submitting declaration in respect of beneficial Interest in any share.

(ii) Section 89(7)

Old Penal Provision

If a company, required to file a return under Section 89 (6) of the Companies Act, 2013, fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 500 but which may extend to ₹1000 and where the failure is a continuing one, with a further fine which may extend to ₹ 1000 for every day after the first during which the failure continues.

New Penal Provision

If a company, required to file a return under Section 89 (6) of the Companies Act, 2013, fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of ₹ 1000 for each day during which such failure continues, subject to a maximum of ₹ 5 Lakhs in the case of a company and ₹ 2 Lakhs in case of an officer who is in default.

Details of changes

Penalty in place of fine for failure to file a return by a company with the Registrar of Companies in respect of declaration of beneficial interest in any share has been substituted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

5) Section 20 of the Companies (Amendment) Act, 2020 amended Section 92 (5) & (6) of the Companies Act, 2013 w.r.t. Annual Return-“Reduction of Penalty.”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

(i) Section 92 (5)

Old Penal Provision

If any company fails to file its annual return under Section 92(4) of the Companies Act, 2013, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 50000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 5 lakhs.

New Penal Provision

If any company fails to file its annual return under Section 92(4) of the Companies Act, 2013, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 10,000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2 lakhs in case of a company and ₹ 50,000 in case of an officer who is in default.

Details of changes

Reduction in amount of monetary Penalty

(ii) Section 92 (6)

Old Penal Provision

If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of Section 92 of the Companies Act, 2013 or the rules made thereunder, he shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lakhs.

New Penal Provision

If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of Section 92 of the Companies Act, 2013 or the rules made thereunder, he shall be liable to a penalty of ₹ 2 Lakhs.

Details of Changes

Fixation of Penalty for Certification of Annual Return by a Company Secretary in Practice otherwise, than in conformity with the requirements of Section 92 of the Companies Act, 2013.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

6) Section 21 of the Companies (Amendment) Act, 2020 amended Section 105(5) of the Companies Act, 2013 w.r.t. Proxy-“Reduction in Penalty”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 105(5)

Old Penal Provision

If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to ₹ 1 Lakh.

Provided that an officer shall not be punishable under Section 105(5) of the Companies Act, 2013 by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

New Penal Provision

If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of ₹ 50,000.

Provided that an officer shall not be liable under Section 105(5) of the Companies Act, 2013 by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

Details of changes

Reduction in monetary penalties

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

7) Section 22(i) of the Companies (Amendment) Act, 2020 amended Section 117(2) of the Companies Act, 2013 w.r.t. Resolutions and Agreements to be filed-“Reduction in Penalty”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 117(2)

Old Penal Provision

If any company fails to file the resolution or the agreement under Section 117(1) of the Companies Act, 2013 before the expiry of the period specified therein, such company shall be liable to a penalty of ₹ 1 Lakh and in case of continuing failure, with further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 25 Lakhs and every officer of the company

who is in default including liquidator of the company, if any, shall be liable to a penalty of ₹ 50,000 and in case of continuing failure, with further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

New Penal Provision

If any company fails to file the resolution or the agreement under Section 117(1) of the Companies Act, 2013 before the expiry of the period specified therein, such company shall be liable to a penalty of ₹ 10,000 and in case of continuing failure, with a further penalty of ₹ 100 for each day after the first during which such failure continues, subject to a maximum of ₹ 2 Lakhs and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ₹ 10,000 and in case of continuing failure, with a further penalty of ₹ 100 for each day after the first during which such failure continues, subject to a maximum of ₹ 50000.

Details for change

Reduction in monetary penalties

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

8) Section 26 of the Companies (Amendment) Act, 2020 amended Section 134(8) of the Companies Act, 2013 w.r.t. “Financial Statement, Board’s Report, etc. “Decriminalisation of offence”- Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Old Penal Provision

If a company contravenes the provisions of Section 134 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 25 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lakhs, or with both.

New Penal Provision

If a company is in default in complying with the provisions of Section 134 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 3 Lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 50,000.

Details of Changes

Fixation of Penalty and omission of imprisonment in case of every officer of the company who is in default in complying with the provisions of Section 134 of the Companies Act, 2013.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

9) Section 28 of the Companies (Amendment) Act, 2020 amends Section 137(3) of the Companies Act, 2013 w.r.t. Copy of Financial Statement to be filed with Registrar- “Reduction of Penalty”- Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 137(3)

Old Penal provision

If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2) of Section 137 of Companies Act, 2013, as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of ₹ 1000 for every day during which the failure continues but which shall not be more than ₹10 Lakhs, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of section 137 of Companies Act, 2013, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of ₹ 1Lakh and in case of continuing failure, with further penalty of ₹ 100 for each day after the first during which such failure continues, subject to a maximum of ₹ 5 Lakhs.

New Penal provision

If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2) of Section 137 of Companies Act, 2013, as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of ₹ 10,000 and in case of continuing failure, with a further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2 Lakhs, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of section 137 of Companies Act, 2013, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of ₹ 10,000 and in case of continuing failure, with further penalty of ₹ 100 for each day after the first during which such failure continues, subject to a maximum of ₹ 50,000.

Details of Changes

The penalties for non-filing of copy of financial statements are reduced under Section 137 of Companies Act, 2013.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

10) Section 29 of the Companies (Amendment) Act, 2020 amends Section 140(3) of the Companies Act, 2013 w.r.t. Removal, Resignation of Auditor and Giving of Special Notice-“Reduction of Penalty”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 140(3)

Old Penal Provision

If the auditor does not comply with the provisions of sub-section (2) of Section 140 of Companies Act, 2013, he or it shall be liable to a penalty of ₹ 50,000 or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 5 Lakhs.

New Penal Provision

If the auditor does not comply with the provisions of sub-section (2) of Section 140 of Companies Act, 2013, he or it shall be liable to a penalty of ₹ 50000 or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 2 Lakhs.

Details of Changes

Maximum penalty amount for non-filing of statement in prescribed form by the Auditor within a period of thirty days from the date of resignation with the Company, the Registrar of Companies or the Comptroller and Auditor-General of India, as the case may be, has been reduced.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

11) Section 30 of the Companies (Amendment) Act, 2020 amended Section 143(15) of the Companies Act, 2013 w.r.t. Powers and Duties of Auditors and Auditing Standards- “Fixation of Penalty”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 143(15)

Old Penal Provision

If any auditor, Cost Accountant or Company Secretary in practice do not comply with the provisions of sub-section (12) of Section 143 of Companies Act, 2013, he shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 25 Lakhs.

New Penal Provision

If any auditor, Cost Accountant, or Company Secretary in practice does not comply with the provisions of sub-section (12) of Section 143 of the Companies Act, 2013 he shall, —

- (a) in case of a listed company, be liable to a penalty of ₹ 5 Lakhs; and
- (b) in case of any other company, be liable to a penalty of ₹ 1 Lakh.

Details of Changes

Penalties for auditor, cost accountant, or company secretary in practice who does not comply with the provision of 143(12) related to reporting of fraud has been fixed in case of listed company or any other company.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

12) Section 33 of the Companies (Amendment) Act, 2020 amends Section 165 (6) of the Companies Act, 2013 w.r.t. Number of Directorship-“Reduction of Penalty”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 165(6)

Old Penal Provision

If a person accepts an appointment as a director in contravention of Section 165(1) of the Companies Act, 2013, he shall be liable to a penalty of ₹ 5,000 for each day after the first during which such contravention continues.

New Penal Provision

If a person accepts an appointment as a director in violation of Section 165 of the Companies Act, 2013, he shall be liable to a penalty of ₹ 2,000 for each day after the first during which such violation continues, subject to a maximum of ₹ 2 Lakhs.

Details of Changes

The penalty w.r.t. a person accepting an appointment as a director in violation of Section 165 of the Companies Act, 2013 is reduced and maximum limit prescribed for the penalty to be levied.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

15) Section 35 of the Companies (Amendment) Act, 2020 amends Section 172 of the Companies Act, 2013 w.r.t. Punishment under Chapter XI i.e. Appointment and Qualifications of Directors-“Fixation of maximum penalty”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Old Penal Provision

If a company contravenes any of the provisions of Chapter XI of the Companies Act, 2013 and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lakhs.

New Penal Provision

If a company is in default in complying with any of the provisions of Chapter XI of the Companies Act, 2013 and for which no specific penalty or punishment is provided therein, the company and every officer of the company who is in default shall be liable to a penalty of ₹ 50,000, and in case of continuing failure, with a further penalty of ₹ 500 for each day during which such failure continues, subject to a maximum of ₹ 3 Lakhs in case of a company and ₹ 1 Lakh in case of an officer who is in default.

Details of Changes

The maximum penalty for default in complying with any of the provisions of chapter XI of the Companies Act, 2013 related to Appointment and Qualifications of Directors in case of company and officer in default has been reduced.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

13) Section 37 of the Companies (Amendment) Act, 2020 amends Section 184(4) of the Companies Act, 2013 w.r.t. Disclosure of Interest by Director-“Decriminalization of offences”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 184(4)

Old Penal Provision

If a director of the company contravenes the provisions of sub-section (1) or sub-section (2) of Section 184 of Companies Act, 2013, such director shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ₹ 1 Lakh, or with both.

New Penal Provision

If a director of the company contravenes the provisions of sub-section (1) or sub-section (2) of Section 184 of Companies Act, 2013, such director shall be liable to a penalty of ₹ 1 Lakh.

Details of Changes

Omission of Imprisonment w.r.t. a failure of director of the company to disclose the nature of his interest under section 184(1) & (2) of the Companies Act, 2013.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

14) Section 41 of the Companies (Amendment) Act, 2020 amends Section 204(4) of the Companies Act, 2013 w.r.t. Secretarial Auditor for Bigger Companies – “Fixation of Penalty”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 204(4)

Old Penal Provision

If a company or any officer of the company or the company secretary in practice, contravenes the provisions of section 204 of Companies Act, 2013, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakhs.

New Penal Provision

If a company or any officer of the company or the company secretary in practice, contravenes the provisions of section 204 of Companies Act, 2013, the company, every officer of the company or the company secretary in practice, who is in default, shall be liable to a penalty of ₹ 2 Lakhs.

Details of Changes

The Penalty amount for contravention of Section 204 of Companies Act, 2013, w.r.t. Secretarial Audit for Bigger Companies, has been fixed.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

15) Section 47 of the Companies (Amendment) Act, 2020 amends Section 302(3) and (4) of the Companies Act, 2013 w.r.t. Dissolution of Company by Tribunal – “Decriminalisation of offence”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 302(3)

Old Provision

A copy of the order shall, within 30 days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.

New Provision

The Tribunal shall, within a period of thirty days from the date of the order,—

(a) forward a copy of the order to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company; and

(b) direct the Company Liquidator to forward a copy of the order to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.

Section 302(4)

Old Penal Provision

If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in Section 302 (3) of the Companies Act, 2013, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Details of Changes:

The penal provision w.r.t. default by the company liquidator in forwarding copy of order of the Tribunal with Registrar of Companies has been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

16) Section 48 of the Companies (Amendment) Act, 2020 omitted Section 342 (6) of the Companies Act, 2013 w.r.t. Prosecution of Delinquent Officers and Members of Company-“Omission of Penalty”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 342 (6)

Old Penal Provision

If a person fails or neglects to give assistance required by Section 342(5) of the Companies Act, 2013, he shall be liable to pay fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1 Lakh.

Details of Changes

The Penalty provisions w.r.t. failure or negligence to give assistance by the liquidator and of every person, who is or has been an officer and agent of the company in connection with the prosecution which is instituted under Section 342 of the Companies Act, 2013 has been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

17) Section 49 of the Companies (Amendment) Act, 2020 amends Section 347(4) of the Companies Act, 2013 w.r.t. Disposal of Books and Papers of Company-“Decriminalization of offences”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 347(4)

Old Penal Provisions

If any person acts in contravention of any rule framed or an order made under sub-section (3) of Section 347 of Companies Act, 2013, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ₹ 50000, or with both.

New Penal Provisions

If any person acts in contravention of any rule framed or an order made under sub-section (3) of Section 347 of Companies Act, 2013, he shall be punishable with fine which may extend to ₹ 50,000.

Details of Changes

The penal provisions have been relaxed by omitting the punishment by way of imprisonment.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

18) Section 50 of the Companies (Amendment) Act, 2020 amends Section 348 (6) & 348 (7) of the Companies Act, 2013 w.r.t. Information as to Pending Liquidations-“Decriminalization of offences”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 348 (6) & (7)

Old Penal Provisions

(6) If a Company Liquidator contravenes the provisions of section 348 of Companies Act, 2013, the Company Liquidator shall be punishable with fine which may extend to ₹ 5000 for every day during which the failure continues.

(7) If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (1) of Section 348 of Companies Act, 2013, audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ₹ 1 Lakh, or with both.

New Penal Provision

(6) Where a Company Liquidator, who is an insolvency professional registered under the Insolvency and Bankruptcy Code, 2016 is in default in complying with the provisions of section 348 of the Companies Act, 2013, then such default shall be deemed to be a contravention of the provisions of the said Code, and the rules and regulations made thereunder for the purposes of proceedings under Chapter VI of Part IV of that Code.

(7) Section 348(7) of the Companies Act, 2013 has been omitted

Details of Changes

The Penal provisions are made in line with the Insolvency and Bankruptcy Code, 2016 and punishment by way of Imprisonment has been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

19) Section 51 of the Companies (Amendment) Act, 2020 amends Section 356 (2) of the Companies Act, 2013 w.r.t. Powers of Tribunal to Declare Dissolution of Company Void. "Decriminalisation of offences"-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 356 (2)

Old Penal Provisions

It shall be the duty of the Company Liquidator or the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if the Company Liquidator or the person fails so to do, the Company Liquidator or the person shall be punishable with fine which may extend to ₹ 10,000 for every day during which the default continues.

New Penal Provision

The Tribunal shall—

(a) forward a copy of the order, within thirty days from the date thereof, to the Registrar who shall record the same; and

(b) direct the Company Liquidator or the person on whose application the order was made, to file a certified copy of the order, within thirty days from the date thereof or such further period as allowed by the Tribunal, with the Registrar who shall record the same."

Details of Changes

Now copy of the order of Tribunal declaring dissolution to be void will be forwarded by the Tribunal to the Registrar and the Tribunal will also direct the company liquidator to send the copy of order to Registrar. Further, the penal provisions have been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

20) Section 54 of the Companies (Amendment) Act, 2020 amends Section 392 of the Companies Act, 2013 w.r.t. Punishment for Contravention of Chapter XXII of the Companies Act, 2013 related to Companies incorporated outside India-“Decriminalization of offence”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 392

Old Penal Provision

Without prejudice to the provisions of section 391 of the Companies Act, 2013, if a foreign company contravenes the provisions of Chapter XXII of the Companies Act, 2013, the foreign company shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 3 Lakhs and in the case of a continuing offence, with an additional fine which may extend to ₹ 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs, or with both.

New Penal Provision

Without prejudice to the provisions of section 391 of the Companies Act, 2013, if a foreign company contravenes the provisions of Chapter XXII of the Companies Act, 2013, the foreign company shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 3 Lakhs and in the case of a continuing offence, with an additional fine which may extend to ₹ 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs.

Details of Change:

The penal provision under Section 392 of the Companies Act, 2013, related to non-compliance of Chapter XXII of the Companies Act, 2013 w.r.t. Companies incorporated outside India, is relaxed by deleting the punishment by way of imprisonment.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

21) Section 57 of the Companies (Amendment) Act, 2020 amends Section 405(4) of the Companies Act, 2013 w.r.t. Power of Central Government to Direct Companies to Furnish Information or Statistics- “Decriminalisation of offences”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 405(4)

Old Penal Provision

If any company fails to comply with an order made under sub-section (1) or subsection (3) of Section 405 of the Companies Act, 2013, or knowingly furnishes any information or statistics which is incorrect

or incomplete in any material respect, the company shall be punishable with fine which may extend to ₹ 25,000 and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 3 Lakhs , or with both.

New Penal Provision

If any company fails to comply with an order made under sub-section (1) or sub-section (3) of Section 405 of the Companies Act, 2013, or furnishes any information or statistics which is incorrect or incomplete in any material respect, the company and every officer of the company who is in default shall be liable to a penalty of ₹ 25,000 and in case of continuing failure, with a further penalty of ₹ 1000 for each day after the first during which such failure continues, subject to a maximum of ₹ 3 Lakhs.

Details of Changes

The penalty amount has been fixed for the company and officer in default in case any company fails to comply with an order made under this section, or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect. Further, the punishment by way of imprisonment has been omitted.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

22) Section 61 of the Companies (Amendment) Act, 2020 amends Section 441(5) of the Companies Act, 2013 w.r.t. Compounding of Certain Offences-“Decriminalization of offences”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Old Penal Provision

Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under section 441(4) of the Companies Act, 2013 shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding ₹ 1 Lakh, or with both.

New Penal Provision

If any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under section 441(4) of the Companies Act, 2013, the maximum amount of fine for the offence proposed to be compounded under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.

Details of Changes

Omission of Imprisonment

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

23) Section 63 of the Companies (Amendment) Act, 2020 amends Section 450 of the Companies Act, 2013 w.r.t. Punishment where no specific penalty or punishment is provided”-Notification dated September 28, 2020 (Amendment Effective from December 21, 2020)

Section 450

Old Penal Provision

If a company or any officer of a company or any other person contravenes any of the provisions of the Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in the Companies Act, 2013 the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ₹ 10,000, and where the contravention is continuing one, with a further fine which may extend to ₹ 1000 for every day after the first during which the contravention continues.

New Penal Provision

If a company or any officer of a company or any other person contravenes any of the provisions of the Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in the Companies Act, 2013, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ₹ 10,000, and in case of continuing contravention, with a further penalty of ₹ 1000 for each day after the first during which the contravention continues, subject to a maximum of ₹ 2 Lakhs in case of a company and ₹ 50,000 in case of an officer who is in default or any other person.

Details of Changes

The penal provisions under Section 450 of Companies Act, 2013, which provided for the punishment where no specific penalty or punishment is provided, is relaxed by providing the maximum amount of Penalty.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Note: Students appearing in June, 2021 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications order etc. issued by MCA, SEBI, RBI & Central Government on or before six months prior to the date of the examination.