

M2K Alert – Company Law Update Series (Part II)

Companies’ (Amendment) Bill, 2020

BACKGROUND

In our Part I of the Company Law Update Series we had discussed the changes to substantive provisions of law proposed by the Companies (Amendment) Bill, 2020 (hereinafter referred to as “the Bill”). The Part II of the Series deals with Relaxation/Rationalisation of the Penal provisions proposed by the Bill.

The glossary of key terms used has been provided at the end of this article.

KEY TAKEAWAYS –RELAXATION/RATIONALISATION OF THE PENAL PROVISIONS

Before discussing the amendments in detail, the adjudication mechanism of offences as per the prevailing legal position under the Act is captured in the below table. This would enable the readers to appreciate the principal level of changes brought about by the Bill under various broad buckets / categories listed subsequently

Category of offences	Trial to be done by	Whether compoundable	Remarks
Punishable with fine and imprisonment	Special Courts or Sessions Court or Metropolitan Magistrate or Judicial Magistrate of first class	No	
Punishable only with imprisonment	<same as above>	No	
Punishable with fine or imprisonment or with both	<same as above>	Yes, by NCLT or RD depending on the amount of fine ¹	Commonly referred to as “Compoundable offences” framework
Punishable only with fine	<same as above>	<same as above>	
Punishable only with penalty	AO to be appointed by CG u/s 454	No. Order of AO appealable to RD ²	Commonly referred to as “In-house adjudication mechanism” (IAM)

¹ RD is empowered to compound offences punishable with a fine upto Rs. 25 lakhs. For amounts higher than Rs. 25 lakhs, NCLT is empowered to compound offences.

² Currently order of RD is not further appealable. The CLC has recommended amendments to be taken up in this regard in the next phase after thorough examination of the issues involved. Hence such amendments are not forming part of the Bill.

1. Omission of Compoundable offences

The CLC was of the view that certain compoundable offences could be dealt with through other mechanisms. The offences dealt with in the below table majorly deal with punishment in case of non-compliance with orders of NCLT. However, such offences could be dealt with under Section 425 of the Act which deals with powers of NCLT in case of contempt of the said orders by any person.

Section 425 provides that NCLT and NCLAT shall have the same jurisdiction and powers as that of High Court as prescribed in the provisions of the Contempt of Courts Act, 1971. Further Section 450 of the Act providing for generic punishment where no specific penalty or punishment is provided could also be invoked.

Accordingly, all offences mentioned in the below table are proposed to be dropped and will be dealt through the contempt powers of NCLT.

Particulars	Before Amendment	After Proposed Amendment
Default u/s 48 w.r.t Variation of shareholders' rights	Company: Fine of Rs. 25,000 to Rs. 5 lakhs; and Officer in default ³ : Imprisonment Up to 6 months; or Fine Rs. 25,000 to Rs. 5 lakhs; or with both	Omitted
Default u/s 59 w.r.t order of tribunal for rectification of register of members	Company: Fine of Rs. 1 lakh to Rs. 5 lakhs; and Officer in default: Imprisonment Up to 1 year; or Fine Rs. 1 lakh to Rs. 3 lakhs; or with both	Omitted
Default u/s 66 w.r.t order of Tribunal for reduction of capital	Company: Fine of Rs. 5 lakhs to Rs. 25 lakhs	Omitted
Default u/s 71 w.r.t Order of Tribunal regarding failure to redeem debentures on maturity etc.	Officer in default: Imprisonment Up to 3 year; or Fine of Rs. 2 lakhs to Rs. 5 lakhs; or with both	Omitted

2. Alternate mechanism/procedures prescribed against existing penal provisions w.r.t liquidation proceedings.

- a) Section 284 of the Act imposes imprisonment or fine on failure of promoters / directors to cooperate with CL. The Bill proposes to drop the penal provisions and authorise the CL to apply to the NCLT and obtain necessary directions from NCLT. Non-compliance with the directions of the NCLT could be dealt with u/s 425 of the Act by invoking contempt powers (as explained above).
- b) Section 302 of the Act requires the copy of the tribunal order regarding dissolution of company to be forwarded by the CL to the RoC within 30 days failing which fine was imposed on the CL. The said process is proposed to be modified whereby the NCLT would directly forward the copy to RoC and also instruct the CL to forward a copy to the RoC who shall in turn update the register w.r.t dissolution of the Company. Consequently, the penal provisions imposed on CL is proposed to be dropped.

³ Officer in default means any of the following officers:- a) WTD (incl MD), b) KMP (CEO/CFD/CS) , c) Where there is no KMP director(s) specified by the Board, d) All directors if no specific director , e) Person charged with responsibility of maintenance of Books of accounts, f) Person in accordance with whose advice , the Board is accustomed to act, g) Every director who is aware of the contravention or where the contravention takes place with his consent, h) Share transfer agents/Registrar and Merchant Bankers (w.r.t contravention related to issue or transfer of shares)

- c) Section 342 of the Act empowers Tribunal to initiate prosecution of any officer or member w.r.t any office in relation to the Company and makes it obligatory on part of liquidator or office to provide assistance/cooperation in relation to prosecution proceedings. Failure to give assistance to prosecution proceedings u/s 342 earlier attracted penalty. Such penal provisions are proposed to be dropped.
- d) Section 348 of the Act imposes fine on CL for non-compliance with provisions of the said section related to information as to pending liquidation. Further imprisonment has also been prescribed in case of wilful default in getting the statements audited from a wrong person. These penal provisions are proposed to be removed and any non-compliances by CL who are also Insolvency professionals is proposed to be dealt with in accordance with Chapter VI of Part IV of IBC, 2016.
- e) Section 356 of the Act requires the copy of the tribunal order regarding dissolution of company being declared void to be forwarded by the CL to the RoC within 30 days failing which fine was imposed on the CL. The said process is proposed to be modified whereby the NCLT would directly forward the copy to RoC and also instruct the CL to forward a copy to the RoC who shall record the same. Consequently, the penal provisions imposed on CL is proposed to be dropped.

3. Limiting Compoundable offences (removing imprisonment part) and restricting the punishment to fine only.

W.r.t penal provisions listed in the below table, the CLC felt that while the criminal liability w.r.t fine being imposed should be retained for the offences provided therein, the punishment of imprisonment was proposed to be dropped since such matters did not involve substantial public interest and a criminal fine was considered to be an appropriate deterrent in this regard.

Particulars	Before Amendment	After Proposed Amendment
Default u/s 8 w.r.t formation of companies with charitable objects etc.	Company: Fine of Rs. 10 lakhs to Rs. 1 crore; and Officer in default: Imprisonment upto 3 years or fine of Rs. 25,000 to Rs. 25 lakhs or with both	Company: Fine of Rs. 10 lakhs to Rs. 1 crore; and Officer in default: Fine of Rs. 25,000 to Rs. 25 lakhs
Misrepresentation of matters to be stated in prospectus U/s 26	Company: Fine of Rs. 50,000 to Rs. 3 lakhs; and Every person who is knowingly a party to the issue of incorrect prospectus: Imprisonment Up to 3 years; or Fine Rs. 50,000 to Rs. 3 lakhs; or with both	Company: Fine of Rs. 50,000 to Rs. 3 lakhs; and Every person who is knowingly a party to the issue of incorrect prospectus: Fine Rs. 50,000 to Rs. 3 lakhs
Default u/s 40 w.r.t Securities to be Dealt with in Stock Exchanges	Company: Fine of Rs. 5 lakhs to Rs. 50 lakhs; and Officer in default: Imprisonment upto 1 year or fine of Rs. 50,000 to Rs. 3 lakhs or with both	Company: Fine of Rs. 5 lakhs to Rs. 50 lakhs; and Officer in default: Fine of Rs. 50,000 to Rs. 3 lakhs
Contravention u/s 68 w.r.t buy back of securities	Company: Fine of Rs. 1 lakh to Rs. 3 lakhs; and Officer in default: Imprisonment upto 3 years or fine of Rs. 1 lakh to Rs. 3 lakhs or with both	Company: Fine of Rs. 1 lakh to Rs. 3 lakhs; and Officer in default: Fine of Rs. 1 lakh to Rs. 3 lakhs

Particulars	Before Amendment	After Proposed Amendment
Contravention u/s Sec 128 w.r.t books of accounts to be kept by company	MD/WTD/CFO or any other person in charge: Imprisonment upto 1 year or fine of Rs. 50,000 to Rs. 5 lakhs or with both	Fine of Rs. 50,000 to Rs. 5 lakhs
Contravention with Chapter X (Section 139 to Section 146) – Also refer Note below	<u>Company</u> : Fine of Rs. 25,000 to Rs. 5 lakhs; and <u>Officer in default</u> : Imprisonment Up to 1 year; or Fine Rs. 10,000 to Rs. 1 lakh; or with both	<u>Company</u> : Fine of Rs. 25,000 to Rs. 5 lakhs; and <u>Officer in default</u> : Fine Rs. 10,000 to Rs. 1 lakh;
Failure to vacate office of Director u/s 167	Director in contravention shall be liable to Imprisonment upto 1 year and fine of Rs. 1 lakh to Rs. 5 lakhs or with both.	Director in contravention shall be liable to fine of Rs. 1 lakh to Rs. 5 lakhs
Alterations in MoA or AoA inconsistent with Tribunal order u/s 242	<u>Company</u> : Fine of Rs. 1 lakh to Rs. 25 lakhs; and <u>Officer in default</u> : Imprisonment upto 6 months or fine of Rs. 25,000 to Rs. 1 lakh or with both	<u>Company</u> : Fine of Rs. 1 lakh to Rs. 25 lakhs; and <u>Officer in default</u> : Fine of Rs. 25,000 to Rs. 1 lakh
Consequence of Termination or Modification of Certain Agreements u/s 243	MD or director or manager: Imprisonment upto 6 months or fine upto Rs. 5 lakhs or with both	Fine of Rs. 5 lakhs
Failure to comply with CG order for preservation of books/records u/s 347	Person in default: Imprisonment upto 6 months or fine upto Rs. 50 thousand or with both	Fine of Rs. 50,000
Punishment for contravention U/s 392 for non-compliance with Chapter 22 – Foreign Companies.	<u>Company</u> : Fine of Rs. 1 lakh to Rs. 3 lakhs and where the failure is a continuing one, with a further fine which may extend to Rs. 50,000 for every day; and <u>Officer in default</u> : Imprisonment of upto 6 months or fine of Rs. 25,000 to Rs. 5 lakhs or with both	<u>Company</u> : Fine of Rs. 1 lakh to Rs. 3 lakhs and where the failure is a continuing one, with a further fine which may extend to Rs. 50,000 for every day; and <u>Officer in default</u> : Fine of Rs. 25,000 to Rs. 5 lakhs
Failure to comply with order of Tribunal or RD w.r.t compounding u/s 441	Officer in default: Imprisonment upto 6 months or fine upto Rs. 1 lakh or with both	Twice the amount prescribed in the respective section.

Note – In case of contravention of any provisions of Section 139 (Appointment of Auditors), Section 143 (Powers and duties of auditors), Section 144 (Auditor not to render certain services), Section 145 (Auditor to sign reports etc.) , Section 147 levies a fine on the auditor of Rs. 25,000 to Rs. 5 lakhs or 4 times the remuneration of the auditor whichever is less. The CLC had recommended to remove Section 143(12) (Reporting of frauds by auditor to CG) from purview of Section 147 since a specific penalty is already prescribed under Section 143(15). However, the bill inadvertently seeks to remove entire Section 143 from purview of Section 147 which would result in any violation of Section 143 by the auditor to be dealt with under Section 450 – Generic penalty for any violation of Company law. However, this does not seem to be intent of the law considering the regulatory focus on audit profession to use it as a measure to enhance corporate governance and detect frauds/identify red flags etc.

4. Altering Compoundable offences to Penalty framework to be subject to IAM framework

Various technical/procedural lapses listed in the table below, which were hitherto punishable with fine/imprisonment, have been moved to an inhouse adjudication mechanism liable to penalty to be dealt with by AO's, thereby significantly easing the burden of NCLT/Special Courts etc.

Particulars	Before Amendment	After Proposed Amendment
Default /s 56 w.r.t Transfer and transmission of securities	Company: Fine of Rs. 25,000 to Rs. 5 lakhs; and Officer in default: Fine of Rs. 10,000 to Rs. 1 lakh.	Any Company / Officer in default shall be liable with a penalty of Rs. 50,000.
Penal provisions u/s 86 w.r.t Chapter on Charges	Company: Fine of Rs. 1 lakh to 10 lakhs; and Officer in default: imprisonment upto 6 months or fine of Rs. 25,000 to Rs. 1 lakh or with both	Penalty of Rs. 5 lakhs for the company and Rs. 50,000 for every officer in default
Incorrect or Non-maintenance of Register of members u/s 88	Company and every officer in default shall be punishable with fine of Rs. 50,000 to Rs. 3 lakhs and where the failure is a continuing one, with a further fine which may extend to Rs. 1,000 for every day.	Company and every officer in default shall be subject to penalty of Rs. 3 lakhs and Rs. 50,000 respectively.
Failure to provide declaration in Respect of Beneficial Interest in any Share u/s 89 by registered/ beneficial owner	Such person shall be punishable with fine upto Rs.50,000 and where the failure is a continuing one, with a further fine which may extend to Rs. 1,000 for every day.	Penalty of Rs. 50,000 and where the failure is a continuing one, with a further penalty of Rs. 200 for every day subject to a maximum of Rs. 5 lakhs
Failure to file return w.r.t Beneficial Interest in any Share u/s 89 by company	Company and officer in default: Fine of Rs. 500 to Rs. 1,000 and where the failure is a continuing one, with a further fine which may extend to Rs. 1,000 for every day.	Company and officer in default shall be liable to a penalty of Rs. 1,000 for each day of continuing default subject to a maximum of Rs. 5 lakhs in the case of a company and Rs. 2 lakhs in case of an officer who is in default.
Failure by an individual to make declaration of significant beneficial ownership u/s 90	Punishable with an imprisonment upto a period of one year or a fine in the range of Rs. 1 lakh to Rs. 10 lakhs or with both.	Penalty of Rs. 50,000 and where the failure is a continuing one, with a further penalty of Rs. 1,000 for every day subject to a maximum of Rs. 2 lakhs.
Failure to maintain register or file return w.r.t Significant beneficial ownership or maintain register u/s 90	Company and every officer in default shall be punishable with fine of Rs. 10 lakhs to Rs. 50 lakhs and where the failure is a continuing one, with a further fine which may extend to Rs. 1,000 for every day.	Company: Penalty of Rs. 1 lakh and where the failure is a continuing one, with a further penalty of Rs. 500 for every day subject to a maximum of Rs. 5 lakhs; and Officer in default: Penalty of Rs. 25,000 and where the failure is a continuing one, with a further penalty of Rs. 200 for every day subject to a maximum of Rs. 1 lakh

Particulars	Before Amendment	After Proposed Amendment
Incorrect certification of annual return by CS in practice u/s 92	CS shall be punishable with a fine of Rs. 50,000 to Rs. 5 lakhs	Penalty of Rs. 2 lakhs
Soliciting appointment of specific persons as proxy for any meeting issued to any member at the Company's expense u/s 105	Every officer of the company who knowingly issues the invitations or wilfully authorises or permits their issue shall be punishable with fine which may extend to Rs. 1 lakh	Every officer of the company who issues the invitation or authorises or permits their issue, shall be liable to a penalty of Rs. 50,000 .
Default u/s 124 w.r.t unpaid dividend	Company: Fine of Rs. 5 lakhs to Rs. 25 lakhs; and Officer in default: Fine Rs. 1 lakh to Rs. 5 lakhs	Company: Penalty of Rs. 1 lakh and where the failure is a continuing one, with a further penalty of Rs. 500 for every day subject to a maximum of Rs. 10 lakhs ; and Office in default: Penalty of Rs. 25,000 and where the failure is a continuing one, with a further penalty of Rs. 100 for every day subject to a maximum of Rs. 2 lakhs
Non-compliance with Sec 134 w.r.t Financial statement, Board report etc.	Company: Fine of Rs. 50,000 to Rs. 25 lakhs; and Officer in default: Imprisonment Up to 3 years; or Fine Rs. 50,000 to Rs. 5 lakhs; or with both	Company: Penalty of Rs. 3 lakhs ; and Officer in default: Penalty of Rs. 50,000
Failure to comply with provisions of CSR u/s 135	Company: Fine of Rs. 50,000 to Rs. 25 lakhs; and Officer in default: Imprisonment Up to 3 years; or Fine Rs. 50,000 to Rs. 5 lakhs; or with both (not yet notified)	Company: Penalty of twice the amount required to be transferred to the designated fund or Rs. 1 crore whichever is less, and Officer in default: Penalty of 10% of the amount required to be transferred or Rs. 2 lakhs , whichever is less.
Failure to intimate fraud to Central Government u/s 143(12)	Statutory/Cost/ Secretarial auditor punishable with fine of Rs. 1 lakh to Rs. 25 lakhs	Statutory/Cost/Secretarial auditor punishable with penalty of a) <u>Listed Companies</u> – Rs. 5 lakhs b) <u>Other companies</u> – Rs. 1 lakh
General penalty u/s 172 for non-compliance with provisions of Chapter XI (Appointment & Qualification of Directors) for which no specific penalty prescribed	Company and officer in default: Fine of Rs. 50,000 to Rs. 5 lakhs	Company: Penalty of Rs. 50,000 and where the failure is a continuing one, with a further penalty of Rs. 500 for every day subject to a maximum of Rs. 3 lakhs ; and Officer in default: Penalty of Rs. 50,000 and where the failure is a continuing one, with a further penalty of Rs. 500 for every day subject to a maximum of Rs. 1 lakh

Particulars	Before Amendment	After Proposed Amendment
Non-compliance with provisions of Section 177 (AC)/ Section 178 (NRC and SRC)	Company: Fine of Rs. 1 lakh to Rs. 5 lakhs; and Officer in default: Imprisonment Up to 1 years; or Fine Rs. 25,000 to Rs. 1 lakhs; or with both	Company: Penalty of Rs. 5 lakhs ; and Officer in default: Penalty of Rs. 1 lakh
Failure of Disclosure of Interest by Director u/s 184	Director shall be liable to imprisonment upto 1 year or fine which may extend to Rs. 1 lakh or with both	Penalty of Rs. 1 lakh
Default u/s 187 w.r.t Investments of Company to be Held in its Own Name	Company: Fine of Rs. 25,000 to Rs. 25 lakhs; and Officer in default: Imprisonment upto 6 months or fine of Rs. 25,000 to Rs. 1 lakh or with both	Company: Penalty of Rs. 5 lakhs ; and Officer in default: Penalty of Rs. 50,000
Related party transactions/contracts in violation of the conditions/ approvals stated u/s 188	<u>Listed companies</u> : Director or employee of the Company shall be punishable with imprisonment of upto 1 year or fine of Rs. 25,000 to Rs. 5 lakhs; and <u>In case of other companies</u> : Fine of Rs. 25,000 to Rs. 5 lakhs	<u>Listed companies</u> : Director or employee of the Company be liable for penalty of Rs. 25 lakhs ; and <u>In case of other companies</u> : Penalty of Rs. 5 lakhs .
Contravention with requirements of Secretarial Audit u/s 204	Company / officer in default/ CS in practice: Fine of Rs. 1 lakh to Rs. 5 lakhs	Company / officer in default/ CS in practice: Penalty of Rs. 2 lakhs
Merger and Amalgamation of Companies. u/s 232	<u>Failure to comply with any provisions of this section</u> : Transferor/ transferee company: Fine of Rs. 1 lakh to Rs. 25 lakhs; and Officer in default of such transferor/ transferee company company: Imprisonment upto 1 year or fine of Rs. 1 lakh to Rs. 3 lakhs or with both	<u>Failure to comply with provision relating to filing certified copy of NCLT order within 30 days to RoC</u> : Company and officer in default: Penalty of Rs. 20,000 and where the failure is a continuing one, with a further penalty of Rs. 1000 for every day subject to a maximum of Rs. 3 lakhs
Contravention of Sec 247 by Registered Valuers	Valuer: Fine of Rs. 25,000 to Rs. 1 lakh	Penalty of Rs. 50,000
Failure by company to furnish Information & statistics under an order u/s 405	Company: Fine upto Rs. 25000; and Officer in default: Imprisonment of upto 6 months or fine of Rs. 25,000 to Rs. 3 lakhs or with both	Company and officer in default: Penalty of Rs. 20,000 . In case of continuing failure, Rs. 1000 for each day subject to a maximum of Rs. 3 lakhs
Punishment Where No Specific Penalty or Punishment is Provided U/S 450	Company and Officer in default: Fine upto Rs.10,000. In case of continuing default, Rs. 1,000 for every day.	Company: Penalty of Rs. 10,000 . In case of continuing default, Rs. 1,000 for every day subject to maximum of Rs. 2 lakhs ; and Officer in default: Penalty of Rs. 10,000 . In case of continuing default, Rs. 1,000 for every day subject to maximum of Rs. 50,000

5. Reduction of penalties or prescribing a maximum cap etc.

The CLC was of the view that in certain cases the quantum of penalty currently prescribed was higher than warranted and accordingly had suggested rationalisation (reduction) of the quantum of penalties. Accordingly, the below amendments have been proposed in the Bill

Particulars	Before Amendment	After Proposed Amendment
Failure/delay in filing notice to RoC for alteration of share capital u/s 64	Company and Officer in default shall be liable to a penalty of Rs. 1,000 for each day during which such default continues, or Rs. 5 lakhs, whichever is less.	Company and Officer in default shall be liable to a penalty of Rs. 500 for each day during which such default continues subject to maximum of Rs. 5 lakhs in case of company or Rs. 1 lakh in case of officer in default.
Failure/delay in filing Annual Return u/s 92	Company and Officer in default shall be liable to a penalty of Rs. 50,000 and in case of continuing failure, with further penalty of Rs. 100 for each day during such failure continues, subject to a maximum of Rs. 5 lakhs	Company and Officer in default shall be liable to a penalty of Rs. 10,000 and in case of continuing failure, with further penalty of Rs. 100 for each day during such failure continues, subject to a maximum of Rs. 2 lakhs for company and Rs. 50,000 w.r.t officer in default
Failure to file Resolution and agreements u/s 117	Company: Penalty of Rs. 1 lakh and in case of continuing failure, with further penalty of Rs. 500 for each day , subject to a maximum of Rs. 25 lakhs ; and Officer who is in default including liquidator: Penalty of Rs.50,000 and in case of continuing failure, with further penalty of Rs. 500 for each day , subject to a maximum of Rs. 5 lakhs .	<u>Company</u> : Penalty of Rs. 10,000 and in case of continuing failure, with further penalty of Rs. 100 per day , subject to a maximum of Rs. 2 lakhs ; and <u>Officer who is in default including liquidator</u> : A penalty of Rs.10,000 and in case of continuing failure, with further penalty of Rs. 100 for each day , subject to a maximum of Rs. 50,000
Failure/delay in filing Financial Statement (FS) with RoC u/s 137	Company shall be liable to a penalty of Rs.1,000 for every day during which the failure continues but which shall not be more than Rs. 10 lakhs ; and MD and CFO of defaulting company or any other director shall be liable to a penalty of Rs. 1 lakh and Rs.100 for each day for continuing failure, subject to a maximum of Rs. 5 lakhs	Company: Penalty of Rs. 10,000 and where the failure is a continuing one, with a further penalty of Rs. 100 for every day subject to a maximum of Rs. 2 lakhs ; and MD and CFO of defaulting company or any other director shall be liable to a penalty of Rs. 10,000 and Rs.100 for each day for continuing failure, subject to a maximum of Rs. 50,000
Failure/delay in filing statement by auditor after resignation u/s 140	Auditor in default shall be liable to a penalty of Rs. 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 Rs. 500 for each day after the first during which such	Auditor in default shall be liable to a penalty of Rs. 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 Rs. 500 for each day after the first during which such failure continues,

Particulars	Before Amendment	After Proposed Amendment
	failure continues, subject to a maximum of Rs. 5 lakhs.	subject to a maximum of Rs. 2 lakhs.
Accepting Directorships beyond specified limits u/s 165	Person in default shall be liable to a penalty of Rs. 5,000 for each day during which the contravention continues.	Person in default shall be liable to a penalty of Rs. 2,000 for each day of continuing default during which the contravention continues subject to a maximum of Rs. 2 lakhs.

6. Others

- a) A proviso introduced to Section 403 by CAA 2017 (which has not yet been notified) provided for imposition of higher additional fees of atleast 2 times the additional fees prescribed, in case of repeated defaults (more than once) in furnishing the same document (applicable to all forms/documents). This provision was felt to be onerous considering the already prescribed fees, additional fees and penalties in some cases. Hence the said proviso is proposed to be modified to provide that where there is a default on two or more occasions in submitting, filing, registering or recording of prescribed documents (applicable only to selected documents or forms which may be prescribed by way of rules), then such documents shall be filed on payment of such higher additional fee as may be prescribed.
- b) The Special Court or the Court of Sessions or Metropolitan Magistrate or Judicial Magistrate of first class (in case Special Court has not been constituted), having jurisdiction over the registered office of the Company which has committed offence, shall undertake trial of offences under the Act. The bill by amending Section 435 of the Act, proposes to remove offence by an employee for wrongfully obtaining possession of the property or wrongfully withholding property of the Company under Section 452, from the purview of Special Courts. This would enable the Company to launch proceedings under the CrPC at the location where the property is situated rather than under the Companies Act at the registered office of the Company which could be different from the location of the property in various cases.
- c) Further Section 452 provides for a fine of Rs. 1 lakh to Rs. 5 lakhs payable by an employee wrongfully obtaining possession of the property or wrongfully withholding property of the Company. Further the said section also provides Court trying the offence to order the employee to refund the benefits derived from such property or serve an imprisonment upto 2 years. The Bill seeks to remove clause w.r.t imprisonment for an employee where the Company has not discharged its social security obligations in connection to that employee such as Provident Fund, Pension Fund, Gratuity, compensation under Workmen's Compensation Act, etc. In other words, for such employee only fine would be imposed.
- d) Section 446B provides for restricting the penalty for non-compliance with filing of annual return u/s 92, filing of resolution u/s 117 and filing of annual financial statements u/s 137 to half the amount prescribed under the relevant sections for small companies and OPC's. The said Section is proposed to be amended to include Start-up, Producer Company, small companies and OPCs and restrict the penalty to half the amount (subject to a maximum of Rs. 2 lakhs for the company and Rs. 1 lakh for the officer in default) for any non-compliance under the Act by aforesaid category of companies. A major relief is expected by virtue of increase in the ambit of the section to additional categories of companies as well as non-compliances.
- e) Section 454 of the Act which provides for power of AO to adjudicate penalty prescribed under various sections is proposed to be amended to include a clause where penalty shall not be imposed for non-filing of annual returns u/s 92 (MGT-7) and u/s 137 (AOC-4) where the same is filed within 30 days of issue of notice by AO.

M2K REMARKS

The CG, by virtue of constant amendments either through Act / Ordinance or through Rules, is striving to consistently keep the Law dynamic and adaptable to changing circumstances.

After the first round of amendments to reclassify a majority of the criminal offences to civil offences through the Companies Amendment (Ordinance), 2018 subsequently enacted as CAA 2019, the second round of amendments to move more of such criminal offences into civil offences is a welcome step and a strong reflection of the government's intent of achieving "Ease of doing business" and making India a more attractive destination for investments.

LIST OF DEFINED TERMS

Adjudicating Officers	AOs
Audit Committee	AC
Central Government	CG
Company Liquidator	CL
Code of Criminal Procedure, 1973	CrPC
Companies Act, 1956	1956 Act
Companies Act, 2013	The Act
Companies (Amendment) Act, 2017	CAA 2017
Companies (Amendment) Act, 2019	CAA 2019
Company Law Committee	CLC
Company Secretary	CS
Corporate Social Responsibility	CSR
Global depository receipts	GDR
Insolvency and Bankruptcy Code, 2016	IBC
Independent director	ID
International Financial Services Centre	IFSC
Managing Director	MD
Ministry of Corporate Affairs	MCA
Non-Banking Financial Companies	NBFCs
National Company Law Tribunal	NCLT
National Company Law Appellate Tribunal	NCLAT
Non-Executive Directors	NED
National Financial Reporting Authority	NFRA
National Housing Bank	NHB
Nomination and Remuneration Committee	NRC
Registrar of Companies	RoC
Regional Director	RD
Reserve Bank of India	RBI
Securities and Exchange Board of India	SEBI
SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015	SEBI LODR
Stakeholders' Relationship Committee	SRC
Whole time Director	WTD

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