



Corporate Laws & Corporate Governance Committee

# **Summary of Provisions of The Companies (Amendment) Act, 2019**



**CORPORATE LAWS & CORPORATE GOVERNANCE COMMITTEE, ICAI  
(Set up under an Act of Parliament)**



## Summary of Provisions of The Companies (Amendment) Act 2019

The Companies (Amendment) Act, 2019 has been passed by the Parliament and got the assent of the President on 31<sup>st</sup> July, 2019.

A total of 41 sections have been amended were amended and 2 new sections have been inserted through the Companies (Amendment) Act, 2019.

- The provisions of this Act, except sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, sections 20 and 21, section 31, sections 33, 34 and 35, sections 37 and 38 shall be deemed to have come into force on the 2<sup>nd</sup> day of November, 2018.
- The provisions of sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, sections 20 and 21, section 31, sections 33, 34 and 35, sections 37 and 38 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for these provisions and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

The Companies (Amendment) Act, 2019 which seeks to replace the Companies (Amendment) Second Ordinance, 2019 with certain additional amendments, *inter alia*, provides for the following, namely:—

- (i) to amend clause (41) of section 2 of the Companies Act, 2013 so as to empower the Central Government to allow certain companies to have a different financial year instead of as determined by the Tribunal;
- (ii) to amend section 12 of the Act empowering the Registrar to initiate action for the removal of name of the company from register of companies, if the company is not carrying on any business or operation in accordance with the provisions of the Act;
- (iii) to amend sixteen sections of the Act so as to modify the punishment as provided in the said sections from fine to monetary penalties to lessen the burden upon the Special Courts;
- (iv) to amend section 132 of the Act to enable the National Financial Reporting Authority to perform its functions through divisions and the Executive Body;
- (v) to amend section 135 of the Act so as to bring clarity to—
  - (a) carry forward the unspent corporate social responsibility amount, to a special account to be spent within three financial years and transfer thereafter to the Fund specified in Schedule VII, in case of an ongoing project; and
  - (b) transfer the unspent amount to the Fund specified under Schedule VII, in other cases;
- (vi) to amend sections 241, 242 and 243 of the Act so as to empower the Central Government to approach Tribunal to issue an order against the persons who are connected with the conduct and management of the company as not fit and proper persons for the acts committed by them which amount to mismanagement; and



## Corporate Laws & Corporate Governance Committee

(vi) to amend section 441 of the Act so as to enhance the jurisdiction of the Regional Director for compounding the offences.

Amongst others, the following are the important amendments:

- Recategorization of 16 minor offences as purely civil defaults which will declog special courts.
- Stringent provisions with reduced timelines for creation and modification of charges.
- Transfer of approval for certain routine functions such as change of financial year and conversion of public to private companies from The National Company Law Tribunal to the Central Government.
- Breach of ceiling on directorship being made a ground for disqualification to be appointed as a director in a company.
- Making non-maintenance of registered office and non reporting of commencement of business grounds results in removal of names of companies from the Register Of Companies.

### Summary of Provisions of The Companies (Amendment) Act 2019

S. No	Chapter/ Section number/ Subsection(s) in the Companies Act, 2013	Section	The Companies Act 2013	Section number of Act	The Companies (Amendment) Act 2019	Remarks
1.	Chapter I- Short Title, Commencement and Definitions	2 (41) Financial year	Financial year, in relation to any company or body corporate, means the period ending on the 31 <sup>st</sup> day of March every year, and where it has been incorporated on or	2	For the first proviso the following shall be substituted:  "Provided that where a company or body	Instead of Tribunal, the application for following a different financial year is to be



## Corporate Laws & Corporate Governance Committee

		<p>after the 1st day of January of a year, the period ending on the 31<sup>st</sup> day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:</p> <p>Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:</p> <p>Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;</p>	<p>corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:</p> <p>Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.";</p> <p>(b) in the second proviso, for the words "Provided further that", the</p>	<p>submitted to Central Government.</p> <p>For pending applications, disposal shall be made by the Tribunal as per the existing provisions.</p>
--	--	--	---	---



**Corporate Laws & Corporate Governance Committee**

					words "Provided also that" shall be substituted.	
2.	CHAPTER II Incorporation Of Company And Matters Incidental Thereeto	Insertion of new section 10(A) (Commencement of Business etc)	New insertion	3	<p>After section 10 of the principal Act, the following section shall be inserted, namely:—</p> <p>(1) A company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—</p> <p>(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and</p>	<p>This Section has been inserted as a new Section after certain modifications in Section 11 which was omitted by Companies (Amendment) Act 2015.</p> <p>Declaration by the directors to ROC for payment of value of shares by the subscribers to the memorandum is required to be filed for amount of share capital agreed to be taken with by him in 180 days of Incorporation.</p> <p>Further, Verification of Registered Office as provided in Section 12(2)</p>



## Corporate Laws & Corporate Governance Committee

					<p>(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.</p> <p>(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.</p> <p>(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar</p>	<p>needs to be done within the aforesaid period.</p> <p>In case declaration has not been filed and ROC has reasons to believe that no business has been transacted, the process of removal of the company u/s 248 of the Act can be initiated.</p> <p>Consequential amendment has been made u/s 248 of the Act.</p>
--	--	--	--	--	---	---



## Corporate Laws & Corporate Governance Committee

					has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.	
3.	CHAPTER II Incorporation Of Company And Matters Incidental Thereeto	Insertion of new sub-section (9) after Section 12 sub section 8	New insertion	4	<p>In section 12 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely:—</p> <p>"(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of</p>	<p>In case the Registrar has reasons to believe that the company is not carrying on any business, physical verification may be made to verify existence of Registered Office.</p> <p>In case of default, even removal of name of the company may be initiated.</p>



Corporate Laws & Corporate Governance Committee

					the name of the company from the register of companies under Chapter XVIII."	
4.	CHAPTER II Incorporation Of Company And Matters Incidental Thereeto	Section 14(1) and (2) - <b>Alteration of articles</b>	(1) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of— (a) a private company into a public company; or (b) a public company into a private company: Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company: Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect	5	(i) in sub-section (1), for the second proviso, the following proviso shall be substituted, namely:—  "Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:  Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement."; (ii) in sub-section (2),	Instead of Tribunal, the application for conversion of public company to private company and vice-versa is to be submitted to Central Government.  For pending applications, disposal shall be made by the Tribunal as per the existing provisions.





Corporate Laws & Corporate Governance Committee

			<p>except with the approval of the Tribunal which shall make such order as it may deem fit.</p> <p>(2) Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.</p>		<p>for the word "Tribunal", the words "Central Government" shall be substituted.</p>	
5.	<p>CHAPTER III Prospectus and Allotment of Securities PART I.—Public offer</p>	<p>Section 26 - Matters to be stated in prospectus</p>	<p>(4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.</p> <p>(5) A prospectus issued under sub-section (1) shall not include a</p>	6	<p>In section 26 of the principal Act,— (i) in sub-sections (4), (5) and (6), for the word "registration", the word "filing" shall be substituted; (ii) after sub-section (1), sub-section (7) shall be omitted.</p>	<p>Section 26 (4), (5) and (6) of the Act have been amended so as to substitute the requirement of registration of prospectus with filing of prospectus with the Registrar.</p>



			<p>statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.</p> <p>(6) Every prospectus issued under sub-section (1) shall, on the face of it,—</p> <p>(a) state that a copy has been delivered for registration to the Registrar as required under sub-section (4); and</p> <p>(b) specify any documents required by this section to be attached to the copy</p>			
--	--	--	---	--	--	--



Corporate Laws & Corporate Governance Committee

			so delivered or refer to statements included in the prospectus which specify these documents.			
6.	CHAPTER III Prospectus and Allotment of Securities PART I.—Public offer	Section 29 - Public offer of securities to be in dematerialised form.	(1) Notwithstanding anything contained in any other provisions of this Act,— (a) every company making public offer; and (b) such other class or classes of public companies as may be prescribed, shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.  (2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in	7	In section 29 of the principal Act,— (i) in sub-section (1), in clause (b), the word “public” shall be omitted; (ii) after sub-section (1), the following sub-section shall be inserted, namely:—  “(1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.”	Section 29 (1) of the Act has been amended to insert sub-section (1A) therein to provide for the requirement of issuance, holding or transferring of securities in dematerialised form for any class of unlisted companies, as may be prescribed by the Central Government.



Corporate Laws & Corporate Governance Committee

			accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.			
7.	CHAPTER III Prospectus and Allotment of Securities PART I.—Public offer	Section 35 - Civil liability for mis-statements in prospectus.	(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section	8	In section 35 of the principal Act, in sub-section (2), in clause (c), for the words "delivery of a copy of the prospectus for registration", the words "filing of a copy of the prospectus with the Registrar" shall be substituted.	Clause (c) in section 35 (2) of the Act has been amended to provide that the copy of the prospectus shall be filed with the Registrar instead of delivery for registration.



Corporate Laws & Corporate Governance Committee

			(5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.]			
8.	CHAPTER IV Share Capital And Debentures	Section 53(3) - <b>Prohibition on issue of shares at discount</b>	(3) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer 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 one lakh rupees but which may extend to five lakh rupees, or with both.	9	In section 53 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—  "(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum	Penalty has been linked with amount raised through the issue of shares at a discount or a penalty of Rs. 5 lakhs whichever is less.  Further, in case of default, the company is required to refund the amount alongwith 12% interest per annum.



Corporate Laws & Corporate Governance Committee

					from the date of issue of such shares to the persons to whom such shares have been issued."	
9.	CHAPTER IV Share Capital And Debentures	Section 64(2) <b>-Notice to be given to Registrar for alteration of share capital</b>	2) If a company and any officer of the company who is in default contravenes the provisions of sub-section (1), it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.	10	In section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—  "(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less."	Minimum penalty has been raised to Rs 1000 for each day.  The word 'penalty' replaces the word 'fine'.
10.	CHAPTER VI Registration Of Charges	Section 77(1) <b>-Duty to register charges, etc.—</b>	—(1) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any,	11	In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:—  "Provided that the Registrar may, on an application by the company, allow such registration to be made—	The Registrar may not allow to register charge after 60 days.  Pre amendment the Registrar could allow to register charges within a period of 300 days of creation of



**Corporate Laws & Corporate Governance Committee**

			<p>creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation:</p> <p>Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed:</p> <p>Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87:</p>	<p>(a) in case of charges created before the commencement of the Companies (Amendment) Act, 2019, within a period of three hundred days of such creation; or</p> <p>(b) in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed: Provided further that if the registration is not made within the period specified—</p> <p>(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for</p>	<p>charge.</p> <p>Post amendment further period of 60 days is allowed to register charge for charges created after the commencement of the Amendment Act.</p> <p>Extension under section 87 to be given by the Central Government under specific circumstances.</p>
--	--	--	---	--	---



Corporate Laws & Corporate Governance Committee

					different classes of companies;  (b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such advalorem fees as may be prescribed."	
11.	CHAPTER VI Registration Of Charges	Section 86- <b>Punishment for contravention</b> New insertion of sub section (1) and (2)	If any company contravenes any provision of this Chapter, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees 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 twenty-five thousand rupees but which may extend to one lakh rupees, or with both.	12	Section 86 of the principal Act shall be numbered as subsection (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—  "(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447."	New Subsection inserted to provide for wilful default.  In case of wilful default, a person shall be liable under section 447 of the Act.
12.	CHAPTER VI Registration Of Charges	Section 87 - <b>Rectification by Central</b>	(1) The Central Government on being satisfied that— (i) (a) the omission to file with	13	For section 87 of the principal Act, the following section shall be substituted,	Rectification is allowed only in case of accidental





**Corporate Laws & Corporate Governance Committee**

		<p><b>Government register of charges in of</b></p>	<p>the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or  <i>(b)</i> the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or  <i>(c)</i> the omission or misstatement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or  <i>(i)</i> on any other grounds, it is just and equitable to grant</p>		<p>namely:—  "87. The Central Government on being satisfied that —    (a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or    (b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just</p>	<p>or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company.</p>
--	--	--	--	--	---	--



**Corporate Laws & Corporate Governance Committee**

			relief, it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the 63 particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.		and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified”	
13.	CHAPTER VII Management and Administration	New Insertion  Section 90 (4A) -Register of significant beneficial owners in a Company.	New Insertion	14	(4A) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.	Section 90 of the Act has been amended by inserting sub-section (4A) to provide that the company shall take necessary steps to identify an individual who is a significant beneficial owner.  Failure to take necessary steps shall lead to action under sub-



Corporate Laws & Corporate Governance Committee

14.	CHAPTER VII Management and Administration	Section 90 (9) and (10) <b>-Register of significant beneficial owners in a Company.</b>	(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8). (10) If any person fails to make a declaration as required under sub-section (1) he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.	14	For section 90 of the principal Act, the following sub-section shall be substituted, namely:—  "(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order.  Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;  (ii) in sub-section (10),—  (a) after the word "punishable", the words	section (11). Sub-section (9) of section 90 of the Act has been amended to provide that the company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order and if no such application is filed, such shares shall be transferred without any restrictions to Investor Education and Protection Fund Authority.
-----	--	---	---	----	---	---



**Corporate Laws & Corporate Governance Committee**

					<p>"with imprisonment for a term which may extend to one year or" shall be inserted;</p> <p>(b) after the words "ten lakh rupees", the words "or with both" shall be inserted.</p>	<p>In the Act, sub-section (9A) has been inserted to provide the power to the Central Government to make rules for the purposes of this section.</p> <p>The penalty has been extended to include Imprisonment along with fine.</p>
15.	CHAPTER VII Management and Administration	Section 92(5) - <b>Annual return.</b>	(5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees 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 fifty thousand rupees but which may extend to five	15	<p>For section 92 of the principal Act, the following section shall be substituted, namely:—</p> <p>"(5) If any company fails to file its annual return under sub-section (4), 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 fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such</p>	<p>For non-filing of Annual Return in time, monetary penalty has been levied.</p> <p>Imprisonment punishment has been withdrawn.</p> <p>Penalty for continuing default has been inserted.</p>



**Corporate Laws & Corporate Governance Committee**

			lakh rupees, or with both.		failure continues, subject to a maximum of five lakh rupees.".	
16.	CHAPTER VII Management and Administration	Section 102 (5) <b>-Statement to be annexed to notice.</b>	(5) If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.	16	13. In section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—  "(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.".	Minimum Penalty has been fixed to Rs 50000.
17.	CHAPTER VII Management and Administration	Section 105 (3) <b>-Proxies</b>	(3) If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine which may extend to five	17	In section 105 of the principal Act, in sub-section (3), for the words "punishable with fine which may extend to five thousand rupees", the	Penalty has been fixed to Rs 5000.



**Corporate Laws & Corporate Governance Committee**

			thousand rupees.		words "liable to a penalty of five thousand rupees" shall be substituted.	
18.	CHAPTER VII Management and Administration	Section 117 (2) - <b>Resolutions and agreements to be filed</b>	(2) If a company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.	18	In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—  "(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of five	In case of default, per day penalty has been introduced.  Penalty for continuing default has been inserted.  The word 'fine' has been replaced with the word 'penalty'.  <b>For Company</b>  Minimum- Rs 1 lakh  Further Penalty  Per Day – Rs 500  Subject to Rs 25 lakh  <b>For Officer including liquidator</b>



**Corporate Laws & Corporate Governance Committee**

					hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees."	Minimum- Rs 0.50 lakh Further Penalty Per Day – Rs 500 Subject to Rs 5 lakh
19.	CHAPTER VII Management and Administration	Section 121 (3) - <b>Report on annual general meeting</b>	(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees	19	In section 121 of the principal Act, for sub-section (3), Amendment of the following sub-section shall be substituted, namely:—  Section 121.  "(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh	In case of default, per day penalty has been introduced.  Penalty for continuing default has been inserted.  The word 'fine' has been replaced with the word 'penalty'.  <b>For Company</b>  Minimum- Rs 1 lakh Further Penalty Per Day – Rs 500



**Corporate Laws & Corporate Governance Committee**

					rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees."	Subject to Rs 5 lakh <b>For Officer</b> Minimum- Rs 0.25 lakh Further Penalty Per Day – Rs 500 Subject to Rs 1 lakh
20.	CHAPTER IX Account Companies	Section 132 – <b>National Financial Reporting Authority</b>	New Insertion and change in the penalty	20	In section 132 of the principal Act,— (a) after sub-section (1), the following sub-section shall be inserted, namely:— “(1A) The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.”; (b) after sub-section (3), the following sub-sections shall be inserted, namely:— “(3A) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member	Section 132 of the Act has been amended to provide that the National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed by the Central Government. It also seeks to provide that there shall be an





**Corporate Laws & Corporate Governance Committee**

					<p>authorised by the Chairperson.          (3B) There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4)."          (c) in sub-section (4), in clause (c), for sub-clause (B), the following sub-clause shall be substituted, namely:—</p>	<p>executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members for efficient discharge of its certain functions.</p>
21.	CHAPTER IX Account of Companies	Section 132 – <b>National Financial Reporting Authority</b>	(B) debaring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.	20	“(B) debaring the member or the firm from—  I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or  II. performing any	Sub-clause (B) of clause (c) of sub-section (4) of section 132 have been amended with respect to the extent of debaring of the member or firm by National Financial Reporting Authority in case professional or



**Corporate Laws & Corporate Governance Committee**

					valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority."	other misconduct is proved.  Consequent to the amendment, NFRA cannot debar a member/firm from engaging in practice but can debar a member or the form from being appointed as an Auditor or Internal Auditor or a Valuer.
22.	CHAPTER IX of Account Companies	Section 135 – <b>Corporate Social Responsibility</b>		21	In section 135 of the principal Act,— (a) in sub-section (5), — (i) after the words "three immediately preceding financial years," the words "or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years," shall be inserted; (ii) in the second proviso, after the words, "reasons for not spending the amount" occurring at the	Sub-section (5) of section 135 has been amended and sub-sections (6), (7) and (8) have been inserted in the said section of the Act to provide, <i>inter alia</i> for (a) carrying forward the unspent amounts, to a special account to be spent within three



### Corporate Laws & Corporate Governance Committee

				<p>end, the words, brackets, figure and letters "and, unless the unspent amount relates to any ongoing project referred to in subsection (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year" shall be inserted;</p> <p>(b) after sub-section (5), the following sub-sections shall be inserted, namely:—</p> <p>"(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent</p>	<p>financial years and transfer thereafter to the Fund specified in Schedule VII, in case of an ongoing project; and</p> <p>(b) transferring the unspent amounts to the Fund specified under Schedule VII, in other cases.</p>
--	--	--	--	--	--



## Corporate Laws & Corporate Governance Committee

				<p>Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.</p> <p>(7) If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such 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 fifty</p>	
--	--	--	--	--	--



Corporate Laws & Corporate Governance Committee

					<p>thousand rupees but which may extend to five lakh rupees, or with both.</p> <p>(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions."</p>	
23.	CHAPTER IX Account of Companies	Section 137 (3) - <b>Copy of financial statement to be filed with Registrar</b>	(3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, 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	22	<p>In section 137 of the principal Act, in sub-section (3),— Amendment of section 137.</p> <p>(a) for the words "punishable with fine", the words "liable to a penalty" shall be substituted;</p> <p>(b) for the portion beginning with the words "punishable with imprisonment", and ending with the words "five lakh rupees or with both", the words "shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further</p>	<p>For non-filing of Financial Statements in time, monetary penalty has been levied.</p> <p>Penalty for continuing default has been inserted.</p> <p>In case of default, per day penalty has been introduced.</p> <p>Imprisonment punishment has been withdrawn.</p>



**Corporate Laws & Corporate Governance Committee**

			Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.		penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees" shall be substituted.	<p><b>For Company</b></p> <p>Per Day – Rs 1000</p> <p>Subject to Rs 10 lakh</p> <p><b>For Officer including Directors</b></p> <p>Minimum- Rs 1 lakh</p> <p>Further Penalty</p> <p>Per Day – Rs 100</p> <p>Subject to Rs 5 lakh</p>
24.	CHAPTER X Audit And Auditors	Section 140 (3) <b>Removal, resignation of auditor and giving of special notice.</b>	(3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees or the remuneration of the auditor, whichever is less, but which may extend to five lakh rupees.	23	In section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—  "(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or	For non-compliance by the auditor of the provisions of resignation, penalty for continuing default has been inserted.  <b>For Auditor</b>



**Corporate Laws & Corporate Governance Committee**

					an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees”	Rs 0.50 lakh or an amount equal to remuneration whichever is less.  Further Penalty Per Day – Rs 500  Subject to Rs 5 lakh
25.	CHAPTER XI Appointment And Qualifications Of Directors	Section 157 (2) - <b>Company to inform Director Identification Number to Registrar</b>	(2) If a company fails to furnish Director Identification Number under sub-section (1), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees	24	In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—  "(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in	Penalty for continuing default has been inserted.  In case of default per day penalty has been introduced.  The word 'fine' has been replaced with the word 'penalty'.  <b>For Company</b>  Minimum- Rs 0.25 lakh  Further Penalty



**Corporate Laws & Corporate Governance Committee**

					<p>default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees."</p>	<p>Per Day – Rs 1000</p> <p>Subject to Rs 1 lakh</p> <p><b>For Officer</b></p> <p>Minimum- Rs 0.25 lakh</p> <p>Further Penalty</p> <p>Per Day – Rs 100</p> <p>Subject to Rs 1 lakh</p>
26.	CHAPTER XI Appointment And Qualifications Of Directors	Section 159  <b>Substitution of new section for section 159. Penalty for default of certain provisions.</b>	<b>Punishment for contravention.—</b> If any individual or director of a company, contravenes any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five	25	<p>For section 159 of the principal Act, the following section shall be substituted, namely:—</p> <p>"159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where</p>	<p>Imprisonment has been withdrawn.</p>





Corporate Laws & Corporate Governance Committee

			hundred rupees for every day after the first during which the contravention continues		the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues."	
27.	CHAPTER XI Appointment And Qualifications Of Directors	Section 164(1) - <b>Disqualifications for appointment of director</b>	(1) A person shall not be eligible for appointment as a director of a company, if (a) he is of unsound mind and stands so declared by a competent court; (b) he is an undischarged insolvent; (c) he has applied to be adjudicated as an insolvent and his application is pending; (d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence: Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more,	26	In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:—  "(i) he has not complied with the provisions of sub-section (1) of section 165."	An additional criteria has been inserted for ineligibility for appointment as a director under the Act.  It states that if a director is holding the directorship in more than 20 companies at the same time, he shall be disqualified from appointed as a director in a company.



Corporate Laws & Corporate Governance Committee

			<p>he shall not be eligible to be appointed as a director in any company;</p> <p>(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;</p> <p>(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;</p> <p>(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or</p> <p>(h) he has not complied with sub-section (3) of section 152.</p>			
28.	CHAPTER XI Appointment And Qualifications Of Directors	Section 165 (6) - <b>Number of directorships</b>	(6) If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to	27	In section 165 of the principal Act, in sub-section (6), for the portion beginning with "punishable with fine" and ending with "contravention continues", the words "liable to a	The penalty provision has been amended.  Maximum capping for penalty has been provided.



Corporate Laws & Corporate Governance Committee

			twenty-five thousand rupees for every day after the first during which the contravention continues.		penalty of five thousand rupees for each day after the first during which such contravention continues" shall be substituted.	
29.	CHAPTER XII Meeting of Board and its Powers	Section 191 (5) - <b>Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.</b>	(5) If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.	28	In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely: "(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees."	In case of default, director shall be liable for a penalty of Rs 1 lakh.  Penalty has been fixed.
30.	CHAPTER XIII Appointment And Remuneration Of Managerial Personnel	Section 197 (7) and (15) - <b>Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.</b>	(7) Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.	29	In section 197 of the principal Act,— (a) sub-section (7) shall be omitted; (b) for sub-section (15), the following sub-section shall be substituted, namely:— "(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company	Sub Section (7) prohibited an Independent Director to accept Stock Option.  With the omission of the said sub-section, an independent director shall be entitled to any stock option.  Penalty has been fixed.



**Corporate Laws & Corporate Governance Committee**

			(15) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.		shall be liable to a penalty of five lakh rupees."	In case of default, director shall be liable for a penalty of Rs 1 lakh.  In case of default, company shall be liable for a penalty of Rs 5 lakh.
31.	CHAPTER XIII Appointment And Remuneration Of Managerial Personnel	Section 203 (5) - <b>Appointment of key managerial personnel</b>	(5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.	30	In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—  "(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first	Penalty has been fixed.  In case of default, director shall be liable for a penalty of minimum Rs 50,000.  In case of default, company shall be liable for a penalty of Rs 5 lakh.



**Corporate Laws & Corporate Governance Committee**

					during which such default continues but not exceeding five lakh rupees."	
32.	<b>CHAPTER XIV Inspection, Inquiry and Investigation</b>	Section 212- Investigation into affairs of company by Serious Fraud Investigation Office.		31	(a) in sub-section (8), for the words "If the Director, Additional Director or Assistant Director", the words "If any officer not below the rank of Assistant Director" shall be substituted; (b) in sub-section (9), for the portion beginning with the words "The Director" and ending with the word, brackets and figure "sub-section (8)", the words, brackets and figure "The officer authorised under sub-section (8) shall, immediately after arrest of such person under such sub-section" shall be substituted; (c) in sub-section (10)— (i) for the words "Judicial Magistrate", the words "Special Court or Judicial Magistrate" shall be substituted; (ii) in the proviso, for the	Section 212 of the Act has been amended to provide that any officer not below the rank of Assistant Director of Serious Fraud Investigation Office (SFIO), if so authorised, may arrest any person in accordance with the provisions of this section.  It also provides that the person so arrested may be taken to a Special Court or Judicial Magistrate or Metropolitan Magistrate within twenty four hours of his arrest.



### Corporate Laws & Corporate Governance Committee

				<p>words "Magistrate's court", the words "Special Court or Magistrate's court" shall be substituted;</p> <p>(d) after sub-section (14), the following sub-section shall be inserted, namely:—</p> <p>"(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any</p>	<p>Further, the section also provides to provide that where an investigation report submitted by SFIO states that a fraud has taken place and any director, key managerial personnel or officer has taken undue advantage or benefit, then the Central Government may file an application before Tribunal with regard to disgorgement and such director, key managerial personnel or officer may be held personally liable without any limitation of liability.</p>
--	--	--	--	---	---



Corporate Laws & Corporate Governance Committee

					limitation of liability.”	
33.	CHAPTER XV Compromises, Arrangements And Amalgamations	Section 238 (3) - <b>Registration of offer of schemes involving transfer of shares</b>	(3) The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.	32	In section 238 of the principal Act, in sub-section (3), for the words "punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees", the words "liable to a penalty of one lakh rupees" shall be substituted.	Penalty has been fixed.  In case of default, director shall be liable for a penalty of Rs 1 lakh.
34.	CHAPTER XVI- Prevention, Oppression and Mismanagement	Section 241-	New Provisions Inserted	33	In section 241 of the principal Act,— (a) in sub-section (2), the following proviso shall be inserted, namely:— "Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench."; (b) after sub-section (2), the following sub-sections shall be inserted, namely:— "(3) Where in the opinion of the Central Government there exist	Sub-section (2) of section 241 of the Act has been amended by inserting a proviso to empower the Central Government to prescribe such company or class of companies in respect of which, applications under such sub-section, shall be made before the Principal Bench of the Tribunal and shall be dealt with by such Bench. It



## Corporate Laws & Corporate Governance Committee

				<p>circumstances suggesting that—</p> <p>(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;</p> <p>(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;</p> <p>(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or</p> <p>(d) the business of a company is or has been</p>	<p>also seeks to provide that in certain circumstances, the Central Government may refer the matter and request to the Tribunal to inquire into the case and record a decision about whether the person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.</p>
--	--	--	--	--	---





## Corporate Laws & Corporate Governance Committee

					<p>conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.</p> <p>(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.</p> <p>(5) Every application under sub-section (3)—</p> <p>(a) shall contain a concise statement of such</p>	
--	--	--	--	--	--	--



**Corporate Laws & Corporate Governance Committee**

					<p>circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and  <i>(b)</i> shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.”</p>	
35.	CHAPTER XVI- Prevention, Oppression and Mismanagement	Section 242 -	New Sub- Section Inserted	34	<p>“(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.</p>	<p>Section 242 of the Act has been amended to provide that at the conclusion of the hearing of the case in respect of section 241, the Tribunal shall record its decision stating specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and</p>



**Corporate Laws & Corporate Governance Committee**

						management of any company.
36.	CHAPTER XVI- Prevention, Oppression and Mismanagement	Section 243- Consequence of termination or modification of certain agreements	New Sub- Section Inserted	35	In section 243 of the principal Act,— (a) after sub-section (1), the following sub-sections shall be inserted, namely:— “(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision: Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years. (1B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force or any contract, memorandum or articles, on the removal of	Section 243 of the Act has been amended to provide that the person who is not a fit and proper person pursuant to section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the relevant decision of the Tribunal.  It also provides that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office



Corporate Laws & Corporate Governance Committee

					<p>a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.”;</p> <p>(b) in sub-section (2), after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or sub-section (1A)” shall be inserted.</p>	<p>before the expiry of the said period of five years. The section also provides that the person so removed from the office of a director or any other office connected with the conduct and management of the affairs of the company shall not be entitled to, or be paid, any compensation for the loss or termination of office.</p>
37.	CHAPTER XVIII Removal Of Names Of Companies From The Register Of Companies	Section 248 (1) - <b>Power of Registrar to remove name of company from register of companies</b>	(1) Where the Registrar has reasonable cause to believe that— (a) a company has failed to commence its business within one year of its incorporation; 1[or] (b)***** (c) a company is not carrying on any business or operation for a period of two immediately preceding	36	In section 248 of the principal Act, in sub-section (1),  (a) in clause (c), for the word and figures "section 455," the words and figures "section 455; or" shall be substituted;  (b) after clause (c) and before the long line, the	Effect of insertion of Section 10A.  Name of the company may be removed in case subscribers to the memorandum have not paid the subscription which they had undertaken to



**Corporate Laws & Corporate Governance Committee**

			financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.		following clauses shall be inserted, namely:—  "(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation.  (e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12."	pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation.  If a company fails to comply with the provisions of maintenance of a registered office and is not found to be carrying out any business, the name of the company shall be removed from the Register of Companies.
38.	<b>CHAPTER XX Winding Up PART I.— Winding up by the Tribunal</b>	Section 272- Petition for winding up.		37	In section 272 of the principal Act, in sub-section (3), for the words, brackets and letter "or clause (e) of that sub-section", the words "of that section" shall be substituted.	Sub-section (3) of section 272 of the Act has been amended to allow the Registrar to present a petition of winding up on the ground that it is just and equitable to do so



Corporate Laws & Corporate Governance Committee

						under clause (e) of section 271.
39.	<b>CHAPTER XXIV Registration Offices and Fees</b>	Section 398- Provisions relating to filing of applications, documents, inspection, etc., in electronic form.		38	In section 398 of the principal Act, in sub-section (1), in clause (f), the word "prospectus," shall be omitted.	Clause (f) of sub-section (1) of section 398 of the Act has been amended by omitting the word "prospectus" as it would not be required to be registered by the Registrar.
40.	CHAPTER XXVIII Special Courts	Section 441 (1) and (6) <b>-Compounding of certain offences</b>	(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by— (a) the Tribunal; or (b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or	39	In section 441 of the principal Act,— (a) in sub-section (1), in clause (b), for the words "does not exceed five lakh rupees", the words "does not exceed twenty-five lakh rupees" shall be substituted;  (b) for sub-section (6), the following sub-section shall be substituted, namely:—  "(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act	Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.  The limit for compounding by the Regional Director has been increased from Rs 5 lakhs to Rs. 25 lakhs.



**Corporate Laws & Corporate Governance Committee**

			any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:		with imprisonment only or with imprisonment and also with fine shall not be compoundable."	
41.	CHAPTER XXVIII Special Courts	Section 446 B - <b>Lesser penalties for One Person Companies or small companies.</b>	Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such	40	In section 446B of the principal Act, for the portion beginning with "punishable with fine" and ending with "specified in such sections", the words "liable to a penalty which shall not be more than one half of the penalty specified in such sections" shall be substituted.	Penalties for One Person Companies and Small companies have been linked with the respective section.



## Corporate Laws & Corporate Governance Committee

			sections.".			
42.	CHAPTER XXIX Miscellaneous	Section 447 (3) - <b>Punishment for fraud</b>	<p>Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:</p> <p>Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. "Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower,</p>	41	<p>In section 447 of the principal Act, in the second proviso, for the words "twenty lakh rupees", the words "fifty lakh rupees" shall be substituted</p>	<p>Penalty for Fraud has been raised from Rs 25 lakh to Rs 50 lakh.</p>





Corporate Laws & Corporate Governance Committee

			and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both."			
43.	CHAPTER XXIX Miscellaneous	Section 454 (3) - <b>Adjudication of penalties</b>	(3) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act.	42	31. In section 454 of the principal Act, — (i) for sub-section (3), the following sub-section shall be substituted, namely: — "(3) The adjudicating officer may, by an order— (a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and  (b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.";  (ii) in sub-section (4), for the words "such company	Rectification of default has been introduced.  Subsection 8 rephrased by including non compliance with the Order.



## Corporate Laws & Corporate Governance Committee

					<p>and the officer who is in default", the words "such company, the officer who is in default or any other person" shall be substituted;</p> <p>(iii) in sub-section (8), —</p> <p>(a) in clause (i), for the words "does not pay the penalty imposed by the adjudicating officer or the Regional Director", the words, brackets and figures. fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted;</p> <p>(b) in clause</p> <p>(i) for the words "Where an officer of a company", the words "Where an officer of a company or any other person" shall be substituted;</p> <p>(ii), for the words "does not pay the penalty", the</p>	
--	--	--	--	--	--	--



Corporate Laws & Corporate Governance Committee

					words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted.	
44.	CHAPTER XXIX Miscellaneous	Insertion of a new section 454A. Penalty for repeated default.	New Insertion	43	After section 454 of the principal Act, the following section shall be inserted, namely:—  "454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act."	New Section inserted for repeated defaults.  In case of repeated default an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.