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REPORT OF THE COMPANY LAW COMMITTEE (2019)

New Delhi, the 14 November, 2019

To

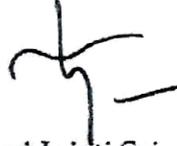
Honourable Union Minister of Corporate Affairs

Madam,

1. We have the privilege and honour to present the report of the Company Law Committee set up on 18th September, 2019, to make recommendations to the Government *inter alia* on further re-categorisation of certain 'criminal compoundable offences' to 'civil wrongs' carrying civil liabilities and certain other changes to facilitate and promote ease of doing business and ease of living.
2. The Committee had the privilege of participation of representatives from the Industry chambers, Professional Institutes and the Legal fraternity. During the course of deliberations, it was endeavoured to arrive at a meaningful understanding of the nature and gravity of the offences, while considering the overall pendency of the courts. In respect of offences involving serious frauds including public interest, status quo has been retained. A principle-based approach was followed by the Committee in the process. The recommendations for re-categorisation of 16 "compoundable offences" into "civil defaults" made by the Committee to review the offences under the Companies Act, 2013 in August, 2018 have been implemented by the Government through the Companies (Amendment) Act, 2019.
3. Through this Report this Committee has recommended to rationalise the penalties in respect of 46 more compoundable offences in five different manners. No change has been suggested in the, serious non-compoundable offences, provided under the Act. The Committee also took note of certain issues which required urgent action to facilitate greater ease of doing business and thereby greater ease of living for corporates and stakeholders in the country. These were examined and suitable recommendations have been included in the Report.

4. We thank you for providing us an opportunity to present our views on the issues concerning the regulatory approach and overall compliance of the provisions of the Companies Act, 2013 and related matters thereto.

Yours sincerely,



(Shri Injeti Srinivas)
Chairman



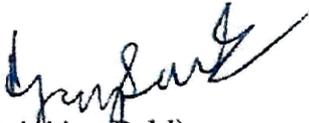
(Shri Uday Kotak)
Member



(Shri Sidharth Birla)
Member



(Shri T. K. Viswanathan)
Member



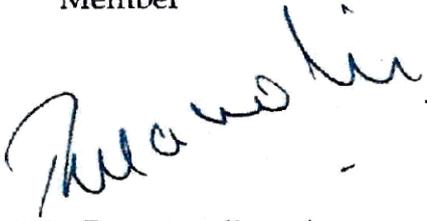
(Shri Ajay Bahl)
Member



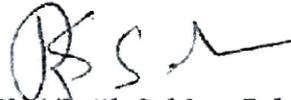
(Shri Shardul S. Shroff)
Member



(Shri Amarjit Chopra)
Member



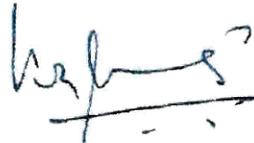
(Ms. Preeti Malhotra)
Member



(Shri Rajib Sekhar Sahoo)
Member



(Shri G. Ramaswamy)
Member



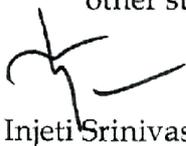
(Shri K.V. R. Murty)
Member-Secretary

PREFACE

1. This report is in pursuance and continuation of the policy of the Government of India to decriminalise non-compliances of minor, technical or procedural nature and facilitate and promote ease of doing business and ease of living for law abiding corporates in the country. The Committee, taking the detailed analysis made during July, 2018 as the base, examined further the scope of recategorising the remaining compoundable offences into either penalties which can be handled through an in-house adjudication mechanism provided under Section 454 of the Act or in any other appropriate manner within the broad framework of relevant laws.
2. The report proposes amendments in 46 penal provisions which will further declog the Special Courts and the National Company Law Tribunal. In addition, it also addresses the need for certain other amendments so as to further improve ease of living for the corporates and other stakeholders of the country.
3. The main recommendations of the Committee as included in Chapter I of the Report are as follows:
 - I. Re-categorising of 23 offences out of the 66 which are in the category of compoundable offences to an in-house adjudication framework wherein defaults would be subject to a penalty levied by an adjudicating officer;
 - II. Omitting 7 compoundable offences, limiting 11 compoundable offences to fine only (i.e. removing the imprisonment part) and recommending 5 offences to be dealt with in an alternate framework (including through exercise of contempt powers by the National Company Law Tribunal);
 - III. No change has been suggested in respect of any of the non-compoundable offences;
4. In addition to the above, Chapter 2 contains recommendations related to further ease of living and the main recommendations relate to:
 - (i) allowing appeal against the orders of the Regional Director before National Company Law Tribunal after due examination;
 - (ii) power to exclude certain class of companies from the definition of 'listed company' , in consultation with SEBI;
 - (iii) clarifying the jurisdiction in matters falling under Section 452;
 - (iv) including the provisions of Part IXA of the Companies Act, 1956 in the Companies Act, 2013;
 - (v) proposing benches of the National Company Law Appellate Tribunal;

- (vi) allowing payment of remuneration to non-executive directors in case of inadequacy of profits by aligning the same with the provisions for remuneration to executive directors in such cases;
- (vii) relaxing provisions related to payment of additional fees under third proviso to Section 403(1);
- (viii) extending applicability of Section 446B (lower penalties for small companies and one person companies) to all provisions attracting monetary penalties and inclusion of producer companies and start-ups in the section's ambit;
- (ix) excluding certain companies/bodies corporate from Section 89 and Chapter XXII;
- (x) reducing timelines for speeding up rights issues under Section 62;
- (xi) extending exemptions from filing of certain resolutions by certain classes of non-banking financial companies under Section 117 in consultation with RBI;
- (xii) exempting certain private placement requirements for qualified institutional placements after due consultation with SEBI;
- (xiii) enabling powers to modify the thresholds which trigger applicability of corporate social responsibility provisions;
- (xiv) revising provisions on disqualification of directors after due consultation and examination;
- (xv) reviewing provisions in respect of debarment of audit firms after due consultation and examination;
- (xvi) reviewing penalty for delay in filing the annual returns and financial statements.

5. I am confident that the recommendations of the Committee will result in further reducing the overall burden of Special Courts and National Company Law Tribunal while giving a fillip to honest and law abiding corporates and other stakeholders in the country.



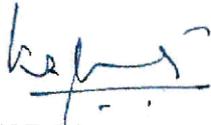
Injeti Srinivas
Secretary, Ministry of Corporate Affairs &
Chairman, Company Law Committee (2019)
New Delhi, 14 November, 2019

ACKNOWLEDGMENTS

The Committee appreciates the inputs received from Shri Allwyn Noronha and Shri Ayush Tandon of AZB & Partners; Shri Vishal Nijhawan and Shri Rohan Jain of Shardul Amarchand Mangaldas & Co.; Shri Jaimin Bhat and Shri Raghvendra Singh of Kotak Mahindra Bank; Ms Abha Seth and Shri Arvind Mishra from FICCI, and Shri Dinkar Sharma and Ms. Anuja Verma of Smart Group.

The Committee would also like to make a special mention of the efforts made by the officers of MCA namely Shri Sridhar Pamarthi and Shri Narendra Kumar Dua, Joint Directors, Shri Pranay Chaturvedi and Ms Tiainla, Deputy Directors, Shri Avinash Kaushik and Shri Krishan Paul Dutt, STAs, Ms. Sanjana Ramachandran, JTA and Shri K.G. Chawla, Consultant in drafting this report, besides providing administrative and technical support to the Committee.

The Committee appreciates the support provided by the team from Vidhi Centre for Legal Policy comprising of Ms. Aishwarya Satija, Ms. Priyal Parikh and Ms. Saumya Jaju, in terms of legal research and drafting of this report, which proved to be very useful to the Committee.



K V R Murty
Joint Secretary, Ministry of Corporate Affairs &
Member Secretary, Company Law Committee
New Delhi, 14 November, 2019

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BACKGROUND

1. INTRODUCTION

- 1.1 Corporate laws form the bedrock of commercial regulation by governing entry of corporates into the market, regulating their functioning, ensuring accountability to their shareholders, as well as laying down corporate governance norms. Over the last few decades, India has witnessed a significant shift in its corporate governance framework. The enactment of the Companies Act, 2013 ("**2013 Act**"), often noted to be one of the most significant legal reforms in India in the recent past, was aimed at bringing Indian company law in tune with global standards. The enactment of the 2013 Act and various legal reforms undertaken since then in the field of companies' law have been intended to promote formation of corporate structures for conducting business, and making such conduct of business easier.
- 1.2 While executive policy is an important consideration for framing laws for corporate regulation, industry views and market practices are key in balancing such policies with ground realities. Due to this, various legal reforms have been born out of recommendations of committees formed by the Government. Reforms in the 2013 Act have been made pursuant to deliberations and suggestions of various committees like the Companies Law Committee of 2016 ("**CLC 2016**"), and the Committee to Review Offences under the Companies Act, 2013 ("**Offences Committee**"). These committees have helped develop pertinent principles and practices, which have resulted in several legal reforms to company and other allied laws.
- 1.3 With such objectives, the Ministry of Corporate Affairs (the "**MCA**") constituted the present Company Law Committee (the "**Committee**") under the chairmanship of Sh. Injeti Srinivas, Secretary, MCA *vide* an office order dated 18th September, 2019. The Committee has been formed with a tenure of one year from the date of its first meeting and may submit its recommendations in phases. These recommendations are geared towards promoting ease of living in the country by providing ease of doing business to law abiding corporates, fostering improved corporate compliance for stakeholders at large and to address emerging issues impacting the working of corporates in the country.
- 1.4 The Committee has been constituted with a wide mandate, including contemplating various reforms like reviewing offences under the 2013 Act; introducing mechanisms to reduce burden on courts and for effective disposal of cases; improving functioning of authorities under the 2013 Act; and other

changes aimed at promoting the ease of doing business in India. The Order of constitution of the Committee, along with a list of its members, has been provided in *Annexure I*.

2. WORKING PROCESS OF THE COMMITTEE

- 2.1 The Committee held its first meeting on 26 September 2019, its second meeting on 10 October 2019, and its third meeting on 8 November 2019. In these meetings, the Committee narrowed its focus to decriminalisation of compoundable offences under the 2013 Act, and to certain urgently needed structural changes, along with certain changes to the compliance and governance framework. Extensive deliberations were held on each of the issues discussed in the report of this Committee ("**Report**") so as to arrive at a consensus on various topics.
- 2.2 In relation to reviewing offences under the 2013 Act, the approach of this Committee has evolved from the approach of the Offences Committee in three ways, insofar as the manner is concerned, it decided to undertake an analysis of the offences. *First*, the Committee took note of alternative mechanism/framework (other than imposition of criminal or civil liability) so that the overall compliances are improved. *Second*, the Committee sought to review the rationale of retaining criminal liability in cases where detailed adjudication is not called for. *Third*, the Committee also reviewed the quantum of penalties and sought to rationalise them, taking into account the nature and gravity of the default. This has been detailed further in Chapter I of this Report.
- 2.3 Further, the Committee also deliberated upon several proposals and suggestions which would result in structural changes to the framework under the 2013 Act and in streamlining corporate compliance and governance. These include providing for an appellate mechanism against orders of Regional Directors ("**RDs**"), modifying the definition of listed companies, enacting a framework for producer companies, decreasing duplication in disclosures, decreasing onerous compliances for small companies, one person companies, producer companies, etc.
- 2.4 The MCA engaged Vidhi Centre for Legal Policy to assist the Committee in reaching informed decisions by carrying out legal research as well as providing drafting assistance.

3. STRUCTURE OF THE REPORT

- 3.1 This Report is divided into two chapters. Chapter I deals with the offences proposed to be reviewed in the 2013 Act. Chapter II deals with ease of doing business and ease of living related changes.
- 3.2 The Order of Constitution of the Committee has been attached to the Report at *Annexure I*. The categorisation of offences, as made by the Offences Committee, has been attached in a tabulated form at *Annexure II*. A table containing the offences proposed to be moved to the IAM framework in this Report, along with the suggested quantum of penalties, has been attached at *Annexure III*. A statement recommending certain revisions in six penalty clauses (out of existing 35 sections already covered under IAM) is at *Annexure IV*. A summary of the recommendations discussed in Chapters I and II in the Report have been tabulated at *Annexure V*. A list of defined terms as used throughout the Report has been attached at the end of the Report.

CHAPTER 1: DECRIMINALISING CERTAIN COMPOUNDABLE OFFENCES

1. BACKGROUND

Treatment of Corporate Criminal Liability

- 1.1. Legislations on company law not only allow entry into the market through corporate structures, but also regulate corporate conduct after such entry. While it was always recognised that corporates may commit wrongs, the categorisation of such wrongdoings as 'criminal offences' was established much later.¹ One of the reasons for such delay was the individualistic nature of criminal law, for instance, determination of 'guilty mind' or *mens rea*.² Though civil law was the primary tool to regulate corporate conduct, there has been a shift towards utilisation of criminal law for this purpose after recognition of the possibility of criminal conduct by corporates. However, even after its establishment, the concept of corporate criminality has been subject to great debate, with views ranging from ample support to staunch scepticism.³
- 1.2. Corporate criminal liability and corporate civil liability share two important characteristics; both impose liability on the corporation and further the goal of deterring corporate misconduct. However, some key features of these liability regimes differentiate them.
- 1.3. *First*, corporate criminal liability often has stronger procedural protections and more powerful enforcement devices.⁴ For instance, criminality requires the

¹ V.S. Khanna, 'Corporate Mens Rea: A Legal Construct in Search for a Rationale' (1996) Discussion Paper No. 200 Harvard Law School <http://www.law.harvard.edu/programs/olin_center/papers/pdf/Khanna_200.pdf> accessed 18 October 2019.

² *Ibid.*

³ See for example, V.S. Khanna, 'Corporate Mens Rea: A Legal Construct in Search for a Rationale' (1996) Discussion Paper No. 200 Harvard Law School <http://www.law.harvard.edu/programs/olin_center/papers/pdf/Khanna_200.pdf> accessed 18 October 2019. John T. Byam, 'The Economic Inefficiency of Corporate Criminal Liability' (1982) 73 J. Crim. L. & Criminology 582 <<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6306&context=jclc>> accessed 18 October 2019. Bruce Coleman, 'Is Corporate Criminal Liability Really Necessary' (1975) 29 Sw L.J. 908 <<https://scholar.smu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3594&context=smulr>> accessed 18 October 2019.

⁴ V.S. Khanna, 'Corporate Criminal Liability: What Purpose Does It Serve?' , (1996) Harvard Law Review, Vol. 109, No. 7, p. 1477 <<https://www.ssrn.com/abstract=803867>> accessed 18 October 2019.

standard of proof to be beyond reasonable doubt, a much higher threshold than the balance of probabilities standard adopted under civil law. *Second*, criminal liability usually involves more severe and, arguably, unique sanctions.⁵ As an illustration, supporters of corporate criminal liability claim that, as opposed to the stigma that is caused by criminal charges, businesses may treat civil penalties as part of the cost of running business. Consequently, *third*, criminal sanctions may prove to be a higher deterrent than civil sanctions.⁶

- 1.4. In spite of the rigours of criminal law, critics have questioned the efficiency of criminal law in dealing with corporate misconduct. Apart from clogging courts, being time-consuming and cost-intensive for the company, it has been noted that imposition of criminal sanctions may reduce the chances of successfully prosecuting companies due to the complexities of criminal trials. For example, proving *mens rea* or knowledge on the part of the company or its officers is a subjective analysis that is often time consuming to prove.⁷ Due to this, some scholars have gone as far as to argue that criminal offences in relation to corporates can be completely replaced by civil ones.⁸ However, this is an extreme end on the spectrum, and many commentators have recommended a balance between civil and criminal sanctions to regulate corporate conduct.⁹ Accordingly, many jurisdictions restrict criminal punishments for corporates for severe violations that may affect public interest. Other wrongs committed by corporates are consequently dealt with by imposing civil penalties. Similarly, excessively high penalties or fines may be counter-productive towards incentivising compliance when they are not commensurate with the gravity of the default and injury to public interest, etc. There is, therefore, a need to review the quantum of penalties.

Decriminalising Offences

- 1.5. Based on a review of literature and practices to deal with corporate misconduct, the Committee discussed that it is essential to strike a balance between civil and

⁵ *Ibid.*

⁶ *Ibid.*

⁷ John T. Byam, 'The Economic Inefficiency of Corporate Criminal Liability' (1982) 73 J. Crim. L. & Criminology 582 <<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6306&context=jclc>> accessed 18 October 2019.

⁸ Daniel R. Fischel and Alan O. Sykes, 'The Journal of Legal Studies' (June 1996) Vol. 25, No. 2, pp. 319-349 <https://www.jstor.org/stable/724509?seq=1#page_scan_tab_contents> accessed 18 October 2019.

⁹ Lawrence Friedman, 'In Defense of Corporate Criminal Liability' (2000) 23 Harvard Journal of Law & Public Policy 833.

criminal liabilities for corporates. It was noted that serious violations of the law, especially wrongful conduct involving fraudulent elements, should be dealt with under criminal law. Due to the nature of such wrongs and the degree of public interest involved, it may be prudent to adopt a strict approach to fraudulent conduct. However, procedural, technical and minor non-compliances, especially the ones not involving subjective determinations, may be dealt with through civil jurisdiction instead of criminal.

- 1.6. The Government of India has already taken a few steps to decriminalise certain offences under the 2013 Act. Pursuant to the recommendations of the Offences Committee in its report released last year, the 2013 Act was amended to change the nature of 16 non-compliances from criminal to civil in nature.¹⁰ Instead of being under the jurisdiction of Special Courts, Adjudicating Officers (“AOs”) now adjudicate these 16 civil violations through the in-house adjudication (“IAM”) framework.
- 1.7. The IAM, as provided in Section 454 of the 2013 Act, is a mechanism for levy of penalty for civil wrongs by an AO. Orders of the AO are appealable to the RD¹¹, and non-compliance of the orders of the AO or the RD attracts criminal sanctions.¹² Further, as per Section 454A of the 2013 Act, repeated defaults within three years may attract higher penalties.
- 1.8. The Committee observed that, after the recommendations of the Offences Committee and the consequent amendments to the 2013 Act, a robust framework for the IAM has been laid down. The design of the IAM under the 2013 Act is intended to be objective, cost-effective and time-efficient.
- 1.9. Therefore, it will be easier for companies to rectify their defaults, pay the penalty and become compliant with the law through the IAM framework, rather than fighting a criminal trial. This not only reduces the cost of compliance for companies, but also aligns with the objective of promoting ease of doing business. Apart from benefiting corporates, utilising the IAM framework to deal with non-compliances by companies may also benefit the State. Not only does this reduce burden on Special Courts and allows them to focus on serious offences under the 2013 Act, it also reduces regulatory burden to prove a default beyond reasonable doubt. Accordingly, the Committee

¹⁰ Sections 9, 10, 15-19, 22-25, 27-30, 32, CAA 2019. While the CAA 2019 has introduced these provisions in the 2013 Act with sanction of the Parliament, the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance, 2019, and the Companies (Amendment) Second Ordinance, 2019 had already brought in these changes.

¹¹ Section 454(5), 2013 Act.

¹² Section 454(8), 2013 Act.

discussed that there is merit in analysing the remaining compoundable offences under the 2013 Act and scrutinise their suitability for being treated under the IAM framework instead of treating them as criminal offences.

Approach of the Committee

1.10. As noted above, the Committee analysed the offences under the 2013 Act to analyse their suitability for the IAM framework. In this analysis, the Committee has limited itself to compoundable offences, i.e. offences punishable with fine only, or punishable with fine or imprisonment, or both.¹³ Non-compoundable offences, i.e. those which involve mandatory imprisonment upon conviction, comprise of serious offences affecting public interest. The Committee decided to review only compoundable offences during the first phase of its recommendations, through this Report.

1.11. While undertaking this analysis, the Committee undertook categorisation of offences under the 2013 Act. It was noted that the Offences Committee had categorised the compoundable offences under the 2013 Act into eight categories. This includes offences related to¹⁴:

- (i) Non-compliance of the orders of the authorities, Central Government/ National Company Law Tribunal (“NCLT”)/RD/ Registrar of Companies (“RoC”) (hereinafter referred to as “**Category A Offences**”);
- (ii) Defaults in respect of maintenance of certain records, in the registered office of the company (hereinafter referred to as “**Category B Offences**”);
- (iii) Defaults on account of non-disclosure of interest of persons to the company, which vitiates the records of the company (hereinafter referred to as “**Category C Offences**”);
- (iv) Defaults related to certain corporate governance norms (hereinafter referred to as “**Category D Offences**”);
- (v) Technical defaults relating to intimation of certain information by filing forms with the RoC or in sending notices to stakeholders (hereinafter referred to as “**Category E Offences**”);
- (vi) Substantial violations that may affect the going concern value of the company or are contrary to larger public interest or otherwise involve

¹³ Section 441, 2013 Act.

¹⁴ Please note that some of these offences have now been shifted to the IAM framework pursuant to the recommendations of the Offences Committee and consequential amendments to the 2013 Act.

serious implications in relation to stakeholders (hereinafter referred to as “**Category F Offences**”);

- (vii) Defaults involved in liquidation proceedings (hereinafter referred to as “**Category G Offences**”); and
- (viii) Defaults not specifically punishable under any provision, but made punishable through an omnibus clause (hereinafter referred to as “**Category H Offences**”).

1.12. A list of compoundable offences in the 2013 Act, as categorised by the Offences Committee and listed above, is provided in *Annexure II*. While analysing this list of offences, the Committee decided to adopt a principle-based approach to decriminalise them. The Committee, accordingly, decided upon five possible principles for each offence.

- (i) Principle 1: Offences that relate to minor/ less serious compliance issues, involving predominantly objective determinations, have been recommended to be shifted to the IAM framework instead of being treated as criminal offences. While the Offences Committee also conducted this exercise, this Committee has recommended shifting offences over and above the ones considered by the Offences Committee earlier.
- (ii) Principle 2: Offences that are more appropriate to be dealt with under other laws, have been proposed to be omitted from the 2013 Act.
- (iii) Principle 3: In relation to some offences that did not seem fit for any of the above two principles, the Committee recommends them to be dealt with in another manner and has provided alternative methods of imposing sanctions.
- (iv) Principle 4: For some offences that are based on subjective determinations but are not very serious violations, it has been recommended that punishment be limited to only fine.
- (v) Principle 5: For serious offences that may involve elements of substantive non-compliances requiring detailed adjudication, the Committee has recommended no legal change.

1.13. Out of these offences, the Committee has recommended offences in 23 provisions to be shifted to the IAM framework, 7 to be omitted, 11 to be limited to fine only, and 5 to be dealt with in an alternate framework. Finally, in 20

provisions related to compoundable offences, the Committee has recommended maintaining status quo. The Committee also recommended rationalisation of penalties in respect of 6 sections under the 2013 Act.

2. OFFENCES TO BE SHIFTED TO IAM

- 2.1. As discussed above, the IAM is a mechanism for levy of civil penalties through proceedings by AOs appointed by the Central Government. The orders of the AO may include penalties for defaults or non-compliances as well as directions to the company or its officers to rectify the default. These orders are appealable to the RD. The Committee noted that offences that involve objective determinations, lack exercise of discretion, or are easily determinable through the MCA21 system and do not affect substantial public interest, may be suitable to be treated as civil wrongs instead of criminal offences. Accordingly, appropriate amendments may be carried out in the 2013 Act, to replace the current punishments provided under these provisions with suitable amounts of penalty. The final list of offences that are to be shifted to the IAM framework as per the below-mentioned analysis of the Committee, along with the suggested quantum, has been provided in *Annexure III*. During this exercise, the Committee also analysed the quantum of penalty provided in the existing provisions under the 2013 Act that are covered under the IAM framework. During such review it was felt that the penalty amount in respect of six sections that are presently under the IAM framework needs to be reviewed. The modified penalties for such six sections have been shown in track version in *Annexure IV*.

Category A Offences

- 2.2. On an analysis of the offences falling within Category A Offences, the Committee noted that some of the offences within this category comprise of wrongs based on non-compliance with orders of authorities under the 2013 Act. For most of the offences within this category, the Committee noted that if a company or its officers have disobeyed orders of other authorities, it is probable that they may not obey orders of the AO either. Further, for non-compliance with orders of the NCLT, the Committee felt that utilising contempt jurisdiction of the NCLT may be preferable to invoking separate offences for such non-compliances. (See paragraph 3.1 in this Chapter below). **Therefore, most of the offences in this category did not seem suitable for the IAM framework, with the exception of the under-mentioned offences.**
- 2.3. Section 232(8) of the 2013 Act provides punishment for failure to comply with obligations imposed by Section 232 in relation to merger and amalgamation of companies. In this regard, the Committee noted that under the Companies Act

1956 (“1956 Act”), punishment for non-compliance with all such obligations was not imposed. Instead, only failure to file a certified copy of the order of the NCLT with the RoC was a criminal offence under the 1956 Act. The Committee discussed that other than filing of such an order with the RoC, obligations imposed under Section 232 of the 2013 Act are based on directions of the NCLT and therefore, need not be dealt with through criminal provisions. **Accordingly, the Committee agreed that Section 232(8) should be amended to impose a civil penalty for failure to file a certified copy of the order of the NCLT under Section 232 with the RoC, within 30 days of such order. This penalty should be dealt with under the IAM framework.**

- 2.4. Further, Section 405(4) of the 2013 Act provides punishment for non-compliance with orders of the Central Government directing a company or companies to furnish certain information. The Central Government issues such orders under Section 405(1) or (3) to a company or a class of companies or to all companies. For example, the Central Government recently issued the *Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019* under Section 405, directing certain companies to furnish information regarding delay in payments to micro, small and medium enterprises. Such orders are likely to be general in nature, and likely to be rarely utilised against a single company. Even when such orders may be issued to a single company, adjudication does not involve use of discretion.
- 2.5. **Due to the general nature of the order under Section 405(4) requiring furnishing of certain information/ statistics, the Committee agreed that this provision may be amended to change the nature of the offence from criminal to civil, in line with the principle to levy monetary penalty w.r.t. defaults relating to filings in the registry. Further, such adjudication is not based on exercise of discretion. Therefore, non-compliance with orders of the Central Government issued under Section 405(1) or (3) should be subject to the IAM framework.**

Category B Offences

- 2.6. This category consists of four offences relating to maintenance of records of the company at its registered office. The objective of such provisions is usually to ensure that companies maintain proper documentation and aid inspections. On examination of the relevant provisions under this Category, the Committee agreed that most of the provisions do not involve subjective determinations and constitute violations of clearly laid down legal obligations. For example, Section 56(6) of the 2013 Act punishes any violation of obligations imposed by Section 56(1) to (5) in relation to transfer or transmission of securities. The timelines for such transfer or transmission are provided in Section 56(4).

- 2.7. The Committee discussed that assessment of a violation of the obligations imposed by Section 56(1) to (5) does not involve detailed adjudication. Similarly, offences under Sections 88(5) and 90(11) relate to maintenance of registers, the format of which is prescribed in subordinate legislation. Determination of violations of these provisions as well, does not involve any subjective evaluation. **Therefore, criminal offences under Sections 56(6), 88(5) and 90(11) may be amended to be substituted with civil penalties administered under the IAM system.**
- 2.8. As opposed to the above provisions, determination of the offence provided in Section 128(6) may involve subjective evaluation. This provision relates to maintenance of books of accounts, financial statements, etc. of a company that represent a “*true and fair view of the state of affairs of the company*” at its registered office. Violation of this obligation will *inter alia* involve a determination of whether the documentation maintained by the company actually represents the true and fair view of its state of affairs. **Therefore, the Committee agreed that such determinations would involve a more detailed adjudication and hence, this provision should not be shifted to the IAM framework.**

Category C Offences

- 2.9. The provisions under this category involve non-compliance with provisions related to disclosures to be made by companies regarding interests of officers of the company. **The Committee noted that the nature of these provisions is harmonious with the design of the IAM framework as they are based on straightforward obligations that are imposed on companies which can be verified through company records.**
- 2.10. Section 90(10) subjects a significant beneficial owner who fails to make a declaration as per Section 90(1) to a fine. However, the company may approach the NCLT to impose restrictions on the assets of a significant beneficial owner defaulting on her disclosure obligations.¹⁵ **Thus, the Committee agreed that the offence provided in Section 90(10) should be made a civil penalty and be subjected to the IAM framework.**
- 2.11. Similarly, Section 89(1) - (3) of the 2013 Act lays down obligations on a registered owner and a beneficial owner of shares of a company to make disclosures as per the prescribed form. If the said person fails to make such a disclosure, she is subject to the criminal punishment under Section 89(5) and cannot enforce any of her rights in relation to such shares. The Committee

¹⁵ Section 90(7), 2013 Act.

discussed that criminal punishment for non-disclosure under this provision may be too harsh, especially since the beneficial owner, anyway, loses her right of enforcement in relation to such shares in such cases.¹⁶ **Accordingly, the Committee agreed that the criminal punishment provided in Section 89(5) of the 2013 Act be substituted with a civil penalty and it may be brought under the IAM framework.**

2.12. Similarly, the Committee noted that directors, who are subject to punishment under Section 184(4) of the 2013 Act, are also subject to vacation of office under Section 167 for the same non-compliance. It was discussed that since a director who fails to disclose interest may any way be forced to vacate her office, the offence under Section 184(4) may be too harsh. **Therefore, the Committee decided that the punishment under Section 184(4) may be amended to be made a civil penalty under the IAM framework.**

Category D Offences

2.13. It was noted that all the offences falling within this category have already been shifted to the IAM framework pursuant to the recommendations of the Offences Committee, and consequential amendments to the 2013 Act.

Category E Offences

2.14. It was noted that all the offences (except offences under Section 86(1) and 89(7) in this category) have already been shifted to the IAM framework pursuant to recommendations of the Offences committee, and consequential amendments to the 2013 Act. The Committee noted that offences falling within this category are suitable to be dealt with under the IAM framework since they are easily discoverable through company records and the MCA-21 Registry. For instance, Section 86 pertains to defaults regarding registration, modification and satisfaction of charges.

2.15. **Due to this, it may now be simpler to determine defaults in relation to Section 86(1) of the 2013 Act. The Committee noted that instances of default in relation to registration of charges may indicate likelihood of financial impropriety or indiscipline. In this regard the Companies (Amendment) Act, 2019 (“CAA 2019”) has introduced sub-section (2) to this section so that recourse could be taken to Section 447 where serious transgressions w.r.t. charge provisions have been made. Therefore, the Committee concluded that Section 86(1) should be amended to be shifted to the IAM framework as there is no subjective determination involved in its adjudication.**

¹⁶ Section 89(8), 2013 Act.

2.16. In relation to Section 89(7), which provides punishment for failure of a company in filing of declarations of beneficial interest in shares with the RoC, the Committee discussed that this provision should not be treated as an offence. Since the right of a person having beneficial interest in shares is protected if she makes a declaration of such interest to the company under Section 89(1), non-filing with the RoC by the company will not affect rights of the beneficial interest-holder. **Therefore, the Committee felt that failure of a company to file the declaration with the RoC under Section 89(7) should be shifted to the IAM framework.**

Category F Offences

2.17. In relation to this category, the Committee noted that many offences relate to substantive aspects, including offences related to going concern concept or involving public interest. For example, violations of provisions such as Section 185 may indicate siphoning of money by the company. The Committee discussed that while offences in this category are serious in nature, some of the offences are based on objectively determinable factors. Further, experience in implementation of these provisions has indicated that adjudication of these offences does not involve exercise of discretion and either relate to making of disclosures or corporate governance requirements capable of being adjudicated under the IAM framework. **Accordingly, the Committee agreed that certain offences within this category be dealt with under the IAM framework to effectively and quickly dispose cases in relation to violations contained therein. These have been discussed below.**

2.18. The Committee first carved out certain provisions on non-compliances in relation to documents filed with authorities under the 2013 Act. Section 92(6) provides for punishment in case of wrongful certification of annual return by a company secretary in practice. Section 134(8) relates to default regarding substantial compliances in respect of approval of financial statements, attachment of Board's report, statements to be provided in the Board's report, etc. Under Section 143(15), the punishment is in relation to an omission on the part of the auditor to report fraud. Similarly, Section 204 relates to secretarial audit for bigger companies.

2.19. **The Committee discussed that the above violations may be shifted to the IAM framework to enable swift adjudication. Since the format and procedure for such documents to be filed is clearly laid out in the 2013 Act and rules thereunder, non-compliances under these provisions will involve objective determinations. Therefore, it was agreed that offences under Sections 92(6), 134(8), 143(15) and 204(4) should be amended to make them**

civil penalties to be dealt with under the IAM framework. In relation to the discussion on amendment to Section 143(15), it was noted that Section 147(2) also provides a criminal punishment for contravention of Section 143. Since the offence under Section 143(12) would get covered in the offence under Section 143(15) itself, a need was felt to amend Section 147(2) to exclude violations under Section 143(12) from such section.

2.20. Similarly, in relation to Section 178(8), the Committee felt that the vigilance mechanism, audit committee, nomination and remuneration committee, etc. play a vital role in the overall corporate governance architecture. **However, consistent with the rationale in the aforementioned paragraph, punishment under Section 178(8) may be made civil in nature to promote quick and efficient disposal of cases. Section 105(5) mainly requires that the company should not be acting as an agent of the member in the matter of appointment of proxies. The Committee felt that a breach of this obligation may be treated as a civil wrong.** Section 188(5) of the Act stipulates that the transactions with related parties without compliance with Section 188 would give rise to a lapse and such contracts would be voidable at the option of the board or the shareholders, as the case may. Additionally, the company can also proceed against the errant individuals. The thresholds w.r.t. Board/shareholders' approval are also well laid out under the relevant rules. **The Committee, accordingly, felt that this offence may be shifted to IAM.** Section 124 of the Act provides for requirements w.r.t. transfer of dividends and shares (after a period of seven years if they remain unclaimed and unpaid) to Investor Education and Protection Fund Authority ("IEPFA"). The disclosures of details of the claimants are also mandated therein. Annual filing is also made in respect of such unpaid dividends by the companies. **The Committee observed that these compliances are not of such nature that criminal punishment is required to be provided for them. Accordingly, it was felt that these may be re-categorised into civil wrongs and IEPFA may be authorised to levy penalty for such defaults.** Section 187(4) provides for punishment in case investments are not held in the name of the company concerned. **The Committee noted that such lapses can be established through company's records and financial statements and hence this offence may be shifted to IAM. The Committee also took note of the recommendations made by the High Level Committee on Corporate Social Responsibility 2018 ("HLC") with regard to penal provisions for non-compliance of Section 135 and agreed with the same. The relevant recommendations of the HLC reads as under:**

"Adequate provisions be provided to ensure compliance. A penalty, 2-3 times the default amount, may be imposed subject to a maximum of Rs. 1 (one) Crore upon the default being made good, but there be no imprisonment."
(Para 3.4 page 63)

2.21. Furthermore, Section 247(3) punishes a valuer who contravenes the obligations imposed under Section 247 and the proviso to Section 247(3) punishes a valuer who contravenes such obligations with the intent to defraud. **The Committee discussed that the offence mentioned in the proviso to Section 247(3) contains an element of fraud and therefore, should be retained as a criminal offence. However, it was agreed that the offence provided in Section 247(3), excluding the proviso, pertains to contravention w.r.t such section and rules made thereunder and thus, it should be made a civil default to be adjudicated under the IAM framework. Accordingly, suitable amendments should be made to Section 247(3).**

Category G Offences

2.22. The Committee deliberated and was of the view that it would not be appropriate to deal with that offences based on defaults related to liquidation proceedings in the IAM mechanism. Many of the offences contained within this category need review in view of corresponding provisions provided under the Insolvency and Bankruptcy Code, 2016 (“IBC”). (See Paragraph 3.2 in this Chapter below). **Therefore, the Committee concluded that none of the offences under this category should be dealt with through the IAM framework.**

Category H Offences

2.23. On a perusal of the offences under this category, the Committee felt that the respective provisions provide offences for wide-ranging non-compliances. Section 172 provides punishment for default of any provision under Chapter XI of the 2013 Act not specifically covered elsewhere in the said Chapter. Section 450 is even broader and provides punishment for contravention of any provision where no punishment is provided under the entire 2013 Act. **While the Offences Committee had rightly noted that the ambit of these provisions is broad and may contain various non-compliances, the Committee felt that lapses covered under Sections 172 and 450 are not of a serious nature and may be considered to be adjudicated under IAM framework.**

2.24. The Committee also discussed the provisions of Section 469 and noted that Section 469(3) *per se* is not an offence, and is rather an enabling provision empowering Central Government to provide, for violation of any rule made under the 2013 Act, the punishment by way of fine up to the limit specified therein. **Accordingly, the Committee decided that the enabling power of the Central Government to prescribe rules and appropriate punishments for violation of such rules, under Section 469(3) should not be amended.**

3. OFFENCES TO BE OMITTED

3.1. The Committee discussed that certain offences under the 2013 Act may be omitted as they may be dealt with through other laws. For instance, offences related to non-compliance with orders of the NCLT may be dealt with through the contempt jurisdiction of the NCLT, instead of being treated as separate offences under the 2013 Act. Section 425 of the 2013 Act lays down the powers of NCLT in relation to contempt. It was also highlighted that in case of any vacuum is created through deletion of an offence, Section 450 of the 2013 Act may be utilised. **Therefore, the Committee decided that offences mentioned in Table 1 below may be omitted from the 2013 Act, and the NCLT may exercise its contempt jurisdiction in relation to these offences. All of the offences herein fall within Category A Offences.**

Sr. No.	Section under 2013 Act	Key Ingredients of the Provision	Observations of the Committee
1	48(5)	Variation of the rights of shareholders of any class with consent of three-fourth of the holders	The Committee discussed that Section 48(2) allows holders of shares to apply to the NCLT if 10% of the holders have not consented to variation or have not voted in favour of the special resolution under Section 48(1). Therefore, any dispute by dissenting members may be brought to the NCLT as per Section 48(2). Consequently, any breach of the order the NCLT thereafter, may be dealt with through contempt powers of the NCLT and Section 48(5) may be omitted.
2	59(5)	Grievance before NCLT regarding entries in register of members	The Committee discussed that since Section 59(5) is related to non-compliance with order of NCLT as per Section 59, Section 59(5) may be omitted. NCLT may exercise its contempt jurisdiction for non-compliance with such orders.

3	66(11)	Publication of order of the NCLT confirming reduction of share capital	The Committee discussed that default in this case also pertains to non-compliance of the order of the NCLT and therefore in this case also, NCLT may exercise its contempt jurisdiction for non-compliance with such orders.
4	71(11)	Non-compliance with order of the NCLT regarding failure to redeem debentures on maturity or in payment of interest	The Committee discussed that the offence under this provision is for non-compliance of an order of the NCLT, and hence may be dealt with through contempt jurisdiction. The Committee added that affected debenture holders (or debenture trustee) may also consider utilising other laws, such as the IBC, in relation to default in payment. The Committee also noted that if the debentures were issued with an intent to defraud then separate criminal proceedings can be launched against the company and its officers in default.

Table 1

3.2. Apart from the aforementioned offences, the Committee also noted that some offences which can be dealt with through other laws. These offences fall within Category G Offences and have been discussed in *Table 2* below. As elaborated on below, the Committee decided that such offences should be omitted from the 2013 Act.

Sr. No.	Section under 2013 Act	Key Ingredients of the Provision	Observations of the Committee
1	342(6)	Prosecution of delinquent officers and	As per Section 342, the NCLT may order the liquidator to prosecute a person who appears to have committed an offence, in the course

		members of company	of winding up, or refer the matter to the RoC. Non-cooperation by liquidator or other persons during prosecution is currently subject to criminal punishment under Section 342(6). The Committee felt that instead of imposing a separate criminal penalty, the prosecuting court may use its powers to mandate cooperation. Therefore, the Committee came to the conclusion that the Section 342(6) should be omitted.
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Table 2

3.3. **The Committee also decided that offences provided under Section 348(6) and (7) of the 2013 Act may also be omitted.** These offences deal with non-compliance by company liquidators.¹⁷ Since such liquidators are regulated persons, alternate laws (that deal with their regulation and disciplinary actions against them) may be sufficient to deal with non-compliances made by them. **Further, suitable changes may be made if required, to ensure that such non-compliances by company liquidators, who are insolvency professionals registered under the IBC, be dealt with under Chapter VI of Part IV of the IBC.**

4. OFFENCES TO BE DEALT WITH UNDER ALTERNATE FRAMEWORKS/ MECHANISMS

4.1. In relation to some provisions of the 2013 Act, the Committee felt that instead of changing the nature of the offence therein, alternate mechanisms may be provided to better achieve the intended aim of such provisions. The recommendations of the Committee in relation to such provisions has been provided in *Table 3* below:

Sr. No.	Section under 2013 Act	Key Ingredients of the Provision	Observations of the Committee
Category A Offences			

¹⁷ As per Section 275 of the 2013 Act, a company liquidator may be an Official Liquidator or an insolvency professional registered under the IBC.

1	16(3)	Non-compliance with order of the RD directing change of name of company	This provision provides punishment if a company fails to change its name despite an order given by the RD to this effect. The Committee noted that currently, not many cases are filed under Section 16(3). Therefore, the Committee felt that it may not be necessary to make non-compliance under Section 16(3) either a civil or a criminal offence. It was felt that on non-compliance with the order of the RD, the company may be compulsorily assigned an auto-generated neutral name that it would have to use until it changes its name. Accordingly, the Committee decided that Section 16(3) should be amended to provide that in case the company fails to abide by the order of the RD under Section 16(1) within 3 months of passing of such order, an auto-generated name would be assigned to the company. The company shall be bound to use such name, until it changes its name through due process as per the provisions of the 2013 Act. Additionally, timelines provided in Section 16(1)(a) and (b) should be harmonised with this time limit.
2	441(5)	Non-compliance with order of compounding of the NCLT or the RD	If an officer or employee of a company fails to comply with the order of the RD or the NCLT in relation to an application for compounding of an offence, such officer or employee is subject to the offence provided in Section 441(5). The Committee felt that while it

			<p>may be necessary to have some deterrent effect for such non-compliance, a separate offence need not be initiated for this purpose. Instead, the maximum permissible fine, for the initial offence for which the compounding application has been made, should be doubled. For example, offence under Section A under the 2013 Act is punishable with a maximum fine of Rs. 1 Lakh and person X has committed a default under that Section. X may make an application for compounding. The order passed by NCLT/ RD thereafter would need to be complied with by X. If X fails to comply with such order, the maximum fine under Section A, when applicable to X in this instance, will automatically stand increased to Rs. 2 Lakh.</p>
Category G Offences			
3	284(2)	Promoters, directors, etc. to cooperate with the Company Liquidator	<p>This provision penalises non-cooperation of promoters, directors, etc. of a company being wound-up, with the Company Liquidator. The Committee felt that instead of imposing criminality for such non-cooperation, a mechanism, whereby the Company Liquidator may apply to NCLT for directing cooperation, may be provided for in case of non-cooperation. Section 19(2) and 19(3) of the IBC also provides such a provision. Therefore, the Committee agreed that Section 284(2) of the 2013 Act,</p>

			in its current form, should be omitted and provisions similar to Section 19(2) and 19(3) of the IBC should be inserted instead.
4	302(4)	Dissolution of company by NCLT	This provision provides for punishment in case the liquidator does not serve the order of dissolution to RoC within 30 days. It was noted that a similar criminal sanction has not been provided in relation to a liquidator under the IBC. Instead, Section 54(3) of the IBC provides that a copy of the order of dissolution is forwarded to the RoC by the NCLT. The Committee felt that as an alternative to the offence under Section 302(4), a provision similar to Section 54(3) of the IBC should be inserted in the 2013 Act. Consequently, Section 302(4) may be omitted. Further, Section 302(3) may be amended to provide that the NCLT shall forward a copy of the order of dissolution to the RoC and also direct the Company Liquidator to forward such order to the RoC.
5	356(2)	Powers of the NCLT to declare dissolution of company void	This provision lays down punishment in case the liquidator does not file the order of the NCLT, declaring the dissolution of a company void, with the RoC. The Committee felt that instead, changes similar to the ones discussed above (in relation to Section 302(4)) may be made here also. Consequently, Section 356(2) may be amended to provide that the NCLT should forward a copy

			of the order to the RoC and also direct the Company Liquidator, or the person on whose application the order was made, to forward such order to the RoC.
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Table 3

5. OFFENCES TO BE RESTRICTED TO FINE ONLY

- 5.1. Upon an analysis of the below listed provisions (which are presently punishable with fine or imprisonment or both), the Committee felt that criminal liability should be retained for the offences provided therein. It was noted that since many of these offences involve adjudication of subjective factors, they would not be suitable to be brought within the IAM framework.
- 5.2. While it was observed that these violations were substantial enough to warrant criminal liability, it may not be necessary to retain the punishment of imprisonment for such violations as punishment by incarceration in such cases is not necessary upon conviction. The Committee discussed that imposition of a criminal fine may be an appropriate deterrent in this regard. The Committee emphasised on the principle that punishment of imprisonment in case of compoundable offences may be restricted only to such offences which involve substantial public interest. **Thus, the Committee concluded that the provisions listed below should be amended to restrict the punishment to fine only. It was also observed that if in such cases fraudulent practices are noticed, recourse can always be taken to Section 447 of 2013 Act.**

Sr. No.	Section under the 2013 Act	Key Ingredients of the Provision	Observations of the Committee
Category A Offences			
1.	242(8)	Powers of NCLT to pass an order when an application has been made under Section 241 for relief in a case of	Section 242(5) makes it an offence for a company to make any alteration in the memorandum or in the articles that would be inconsistent with an order of the NCLT, unless such alteration is made with the leave of the NCLT.

		oppression and mismanagement	Notably, there is scope for different interpretations of the conditions of the order and/or the memorandum or articles, and this may require proper examination. Thus, it was decided that violation of the provision should not be brought under the IAM. The Committee felt that the prosecuting court would be in the best position to decide upon the factum and degree of contravention. Further, in line with the rationale mentioned in paragraph 5.2 above, the Committee concluded that the punishment in Section 242(8) should be restricted to fine only.
2.	243(2)	Default in complying with the directions of the NCLT regarding termination or modification of certain agreements	Section 243(2) of the 2013 Act encompasses punishment for both Section 243(1) and (1A). While it was noted that this offence constituted a serious enough violation to not be diluted to a civil default, in line with the rationale mentioned above in paragraph 5.2 above, the Committee concluded that the punishment for the offence in Section 243(2) should be restricted to fine only.
Category B Offences			
3.	128(6)	Maintenance of the books of accounts of the company at its registered office and its inspection thereof by any director	The Committee felt that determination of whether the books of accounts of the company display a 'true and fair view' of the company's affairs is a subjective analysis that requires detailed examination. Therefore, the offence mentioned in Section

			128(6) was not considered suitable for the IAM framework. In line with the rationale mentioned in paragraph 5.2 above, the Committee concluded that the punishment in Section 128(6) should be restricted to fine only.
Category F Offences			
4.	8(11)	Failure of the company to comply with the requirements imposed on Section 8 companies	The Committee noted that Section 8 imposes distinct obligations on companies covered therein, and the punishment for non-compliance in this regard is provided in Section 8(11). Adjudication of a charge under Section 8(11) may require detailed examination and evaluation of subjective obligations. Consequently, the Committee discussed that Section 8(11) was not suitable to be made a civil default. It was noted that Section 8 also allows various other steps that may be taken against non-compliant companies therein, like revocation of license or action under Section 447, wherever required. In line with the rationale in paragraph 5.2 above, the Committee concluded that punishment for the offence in Section 8(11) should be restricted to fine only.
5.	26(9)	Contravention of matters prescribed to be stated in prospectus	While the Committee noted that violation of this provision is significant and should not be diluted to a civil default, it was also felt that imprisonment should be removed since the default would also be addressed through SEBI

			<p>Regulations. In line with the rationale mentioned in paragraph 5.2 above, the Committee concluded that the punishment for the offence in Section 26(9) may be restricted to fine only. It was added that this recommendation should be finalised subject to consultation with the Securities Exchange Board of India (“SEBI”).</p>
6.	40(5)	Default in complying with requirements for public offer	<p>The rationale behind restricting liability under this provision was similar to the one above, as it was felt that default under the same involves securities laws related compliance for which SEBI would also take action. In line with the rationale mentioned in paragraph 5.2 above, the Committee concluded that the punishment for the offence in Section 40(5) may be restricted to fine only. It was added that this recommendation should be finalised subject to consultation with SEBI.</p>
7.	68(11)	Default in complying with requirements for buy-back	<p>The rationale behind restricting liability under this provision was similar to the one above, as it was felt that default under the same would involve securities laws related compliance for which SEBI may also take action. In line with the rationale mentioned in paragraph 5.2 above, the Committee concluded that the punishment for the offence in Section 68(11) may be restricted to fine only. It was added that this</p>

			recommendation should be finalised subject to consultation with SEBI.
8.	147(1)	Default in complying with provisions of Chapter X	The Committee felt that imposition of imprisonment for any default of the provisions in Sections 139 to 146 was onerous. The Committee was of the opinion that the punishment for this offence should be restricted to fine only and in case of any default with an intention to defraud, the same can be dealt with under Section 447 of the 2013 Act, which provides for punishment for fraudulent actions.
9.	167(2)	Vacation of office of director	The Committee noted that the fine provided in the provisions is adequate (not less than one lakh rupees and not more than five lakh rupees), therefore, the imprisonment component may be removed. The Committee, accordingly, was of the opinion that the punishment for this offence should be restricted to fine only.
10.	392	Punishment for contravention of provisions related to foreign companies	This provision deals with violation committed by a foreign company in respect of Chapter XXII. The Committee felt that foreign companies registered under Chapter XXII are also required to comply with all other applicable laws for the business conducted by them within India. Keeping in view the nature of requirements provided in Chapter XXII, the imprisonment part in the penal provisions in

			respect of officers in default of foreign companies was considered unreasonable. Therefore, the Committee concluded that punishment for this offence should be restricted to fine only.
Category G Offences			
11.	347(4)	Disposal of books and papers of company	In line with the reasoning in paragraph 5.2 above, the Committee recommended that punishment under Section 347(4) should be restricted to fine only.

Table 4

6. OFFENCES WHERE STATUS QUO IS TO BE MAINTAINED

- 6.1. Finally, after going through all the offences proposed to be analysed, the Committee felt that there were some offences that were best left untouched. Due to the nature of these offences, the Committee noted that these were not suitable to be brought within the IAM framework. In this regard, the Committee adopted a principle-based approach in filtering through the provisions and specifically decided to maintain status quo for offences which involved an element of fraud, deceit, and wrongful dealing. Examples of these are: provisions regarding contravention of duties by directors and auditors/cost auditors, punishment for fraud and repeated default.
- 6.2. In addition to this, the Committee also decided to retain penal provisions, which relate to maintenance and promotion of financial discipline within the company, without any change. For instance, offences related to acceptance and repayment of public deposits, financial statements, valuation, holding of annual general meetings and member meetings, etc. The Committee also decided to recommend no dilution for certain offences which involved a larger public interest, such as: announcement of liquidation, imposition of restriction on transfer securities and assets, non-compliance during investigative processes, etc. **The Committee, therefore, suggested no change to the offences contained in the below-listed provisions.**

Sr. No.	Section under the 2013 Act	Key Ingredients of the Provision
Category A Offences		
1.	99	Default in holding annual general meetings or non-compliance of the order to hold meeting of members or any other orders of the NCLT.
2.	206(7)	Failure to furnish information or explanation or additional documents with respect to any documents filed by the company required by the RoC.
3.	221(2)	Non-compliance of the NCLT's order restricting any removal, transfer, or disposal of funds, assets, or properties of the company on grounds of being prejudicial to creditor/shareholder/public interest.
4.	222(2)	Non-compliance of the NCLT's order restricting issuance or transfer of securities while investigating the company.
5.	454(8)	Company or the officer of the company in default does not pay the penalty or comply with the direction within a period of 90 days.
Category F Offences		
6.	74(3)	Failure of the company to repay deposits made before the commencement of the 2013 Act beyond 3 years or the period granted by the NCLT.
7.	76A	Non-compliance of conditions for acceptance or repayment of deposits under Section 73 or 76 of the 2013 Act.
8.	129(7)	Non-compliance of the provisions relating to conditions prescribed with respect to financial statements and accounting standards.

9.	147(2)	Contravention by the auditor of the provisions relating to her functions and duties given in specified sections.
10.	148(8)	Non-compliance of the provisions relating to conditions prescribed with respect to audit of items of cost for certain companies.
11.	166(7)	Contravention by the director of the provisions relating to her functions and duties given in the specified sections.
12.	185(4)	Contravention of provision restricting extension of loan to directors.
13.	249(2)	Contravention of restriction of companies while filing applications under Section 248.
14.	447	Punishment for fraud where fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest.
15.	451(1)	Punishment for repeated default on second or subsequent occasions within the period of 3 years.
16.	452(1)	Punishment for wrongful withholding of property.
17.	464(3)	Punishment for contravention of prohibition of association or partnership of persons exceeding certain number.
Category G Offences		
18.	274(4)	Contravention of provisions relating to filing of books of accounts by a director/officer of company during winding up by NCLT.
19.	344(2)	Non-compliance of provision to include on company's documents a statement about company's liquidation.

Category H Offences		
20.	469(3)	Central Government has power to prescribe rules and such rules may prescribe punishment by way of fine.

Table 5

CHAPTER 2: EASE OF LIVING RELATED CHANGES

1. ALLOWING APPEAL AGAINST THE ORDERS OF THE RD BEFORE NCLT

- 1.1. The office of RD performs various functions under the 2013 Act, including supervision of RoCs and Official Liquidators, working in their regions, carrying out inspections, coordination with the State and Central Governments, and exercising statutory powers delegated by the Central Government under the 2013 Act. RDs also hear appeals made from the order of the AO under Section 454. Section 454 of the 2013 Act provides for adjudication of penalties under various provisions of the Act by AOs appointed by the Central Government.
- 1.2. In order to declog such courts and Tribunals, the Offences Committee recommended re-categorisation of certain compoundable offences to the IAM framework, under which the AO imposes monetary penalties.¹⁸ Pursuant to the recommendation of the Offences Committee, the 2013 Act was amended and *inter alia* as many as 16 offences of the 2013 Act were decriminalised and made civil violations.¹⁹
- 1.3. By virtue of the said amendments, the scope of the IAM has gone up from 18 Sections to 35 Sections of the Act (new Section 10A providing for monetary penalty inserted through CAA 2019). Consequently, the scope of adjudicatory powers of the AOs appointed under Section 454 of the 2013 Act has substantially expanded. This Committee further proposes to add to the recommendations of the Offences Committee by suggesting various other offences under the 2013 Act that may also be dealt with through the IAM framework (*See* Chapter 1 Paragraph 2 above).
- 1.4. As per the scheme of Section 454 read with the Companies (Adjudication of Penalties) Rules, 2014, the AO can pass orders imposing penalty on companies (including officers-in-default or any other person) on non-compliance or default under the provisions of the 2013 Act. A person/company aggrieved by the order of an AO may appeal to the RD having jurisdiction in the matter and

¹⁸ Ministry of Corporate Affairs, *Report of the Committee to Review Offences under the Companies Act, 2013*, August 2018 <http://www.mca.gov.in/Ministry/pdf/ReportCommittee_28082018.pdf> accessed 18 October 2019.

¹⁹ Sections 9, 10, 15-19, 22-25, 27-30, 32, CAA 2019. While the CAA 2019 has introduced these provisions in the 2013 Act with sanction of the Parliament, the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance, 2019, and the Companies (Amendment) Second Ordinance, 2019 had already brought in these changes.

the RD may decide the appeal after hearing the parties concerned.²⁰ Non-compliance with the orders of the AO or the RD, as the case may be, currently entails penal consequences, and in case of an officer-in-default/other person, imprisonment or fine.²¹

1.5. Since the RD has statutory powers, pursuant to both Section 454 and other provisions where such power has been delegated to the RD to pass suitable orders, stakeholders may desire an appellate mechanism against such orders within the 2013 Act, instead of taking recourse to writ jurisdiction.

1.6. **While the Committee was of the opinion that providing for an additional stage of appeal against the orders of the RD may be beneficial, it was also noted that the same requires comprehensive examination to identify all such provisions where an appellate mechanism is desirable. Accordingly, suitable amendments in this regard may be considered and taken up in the next phase.**

2. POWER TO EXCLUDE CERTAIN CLASS OF COMPANIES FROM THE DEFINITION OF 'LISTED COMPANY', IN CONSULTATION WITH SEBI

2.1. Section 2(52) of the 2013 Act defines a 'listed company' as any company which has any of its securities listed on any recognised stock exchange. 'Securities', as defined under the Securities Contract (Regulation) Act, 1956 ("SCRA"), includes "*shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.*"²² Thus, any company whose shares, stocks, bonds, debentures etc. are listed on a stock exchange would qualify as a listed company under the 2013 Act.

2.2. So far as listing of securities on a stock exchange is concerned, SEBI has issued various regulations for issue and listing of securities, including:

- (i) SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("**Debt Listing Regulations**") which is applicable to non-convertible debt securities i.e. debentures, bonds and such other securities of a body corporate or any statutory body constituted by virtue of a legislation; and

²⁰ Section 454(5) and (7), 2013 Act.

²¹ Section 454(8), 2013 Act.

²² Section 2(h), SCRA.

- (ii) SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (“**NCRPS Regulations**”) to govern the issuance and listing of Non-Convertible Redeemable Preference Shares.
- 2.3. While the NCRPS Regulations are applicable only to public companies either listed or proposing to be listed on a recognised stock exchange, the Debt Listing Regulations apply to any company seeking to list debt instruments on a stock exchange, even on a private placement basis.²³ Regulations 19, 20, 20A, 20B, 21, 21A etc. of the Debt Listing Regulations set out in detail the procedure for listing of debt securities offered on a private placement basis on a recognised stock exchange.
- 2.4. The private placement under the 2013 Act²⁴ read with the Debt Listing Regulations indicate that not merely public companies, but *even* certain private companies, are permitted to list debt securities on a recognised stock exchange. Therefore, if a private company lists debt securities such as non-convertible debentures, bonds etc. (offered on a private placement basis) on any recognised stock exchange after duly complying with the necessary formalities, such a company would fall under the definition of a ‘listed company’ under the 2013 Act. Due to this, such private companies have also been folded into the definition of a listed company under the 2013 Act.
- 2.5. The Committee felt that classifying a private limited company as a ‘listed company’ merely based on listing of certain debt securities offered on a private placement basis seems inappropriate and is required to be addressed. However, public companies offering non-convertible debt securities through this route must continue to be treated as ‘listed companies’ as per Section 2(52) of the 2013 Act.
- 2.6. Furthermore, listed companies are subject to more stringent regulation compared to unlisted private companies. For instance, a listed company is required to adhere to stricter compliance norms when it comes to filing of annual returns, maintenance of records, appointment of auditors, appointment of independent directors & woman director, constitution of board committees, filing reports of annual general meetings, etc. This may dis-incentivise private

²³ Regulation 3, Debt Listing Regulations.

²⁴ Pursuant to rampant malpractices in issuance of securities on a private placement basis and the decision rendered by the Hon’ble Supreme Court in the case of *Sahara India Real Estate Corporation Ltd. v. SEBI & Ors.* [(2012) 10 SCC 603], the scope of private placement was modified under the 2013 Act in comparison to the 1956 Act.

companies from seeking listing of their debt securities, even though doing so might be in the interest of the company.

2.7. This issue was also analysed by CLC 2016. While acknowledging the aforementioned anomaly in the definition of listed company under the 2013 Act, CLC 2016's report stated that "*The Committee felt that while the definition of the term 'listed company' need not be modified, the thresholds prescribed for private companies for corporate governance requirements may be reviewed.*"²⁵ Whereas this recommended modification of thresholds has been undertaken for some compliances, such an exercise has not been carried for all compliances of listed companies. While taking note of this, the Committee discussed that casting stricter obligations on private companies that are currently falling within the definition of 'listed companies' makes compliance requirements for such companies disproportionately burdensome. In line with the Government's steps to promote ease of doing business, the Committee decided that it would be more appropriate to exclude such private companies from the definition of a 'listed company'. However, it was cautioned that any such exclusion from the definition of 'listed company' should be carefully analysed to avoid any unintended consequences that may arise.

2.8. **Therefore, the Committee agreed and recommended that the definition of a 'listed company' under Section 2(52) of the 2013 Act should be amended to exclude certain classes of companies, listing such classes of securities, as may be prescribed by the Central Government in consultation with SEBI.**

3. CLARITY ON JURISDICTION IN MATTERS FALLING UNDER SECTION 452

3.1. Section 452 of the 2013 Act provides for punishment to an employee or an officer of the company who either wrongfully obtains possession of the property of the company or wrongfully withholds property of the company. Sections 435 and 436 of the 2013 Act provide for establishment of Special Courts and their jurisdiction for trying offences.

3.2. Reading the aforementioned provisions together, the competent court to adjudicate an offence under Section 452 is the Special Court established in the area where the registered office of the company, whose employee/officer has committed the alleged offence, is located. For instance, if an employee of Company X, whose registered office is situated in Mumbai, wrongfully withholds property of the company that is situated in Ahmedabad, the competent court for trying the offence against the employee would be the

²⁵ Ministry of Corporate Affairs, Government of India, 'Report of the Companies Law Committee' (February 2016) para 1.13.

Special Court having jurisdiction in relation to the registered office situated in Mumbai.

3.3. The rationale behind Section 452 is to mitigate the problems faced by a company trying to recover the property it had given to an employee. The corresponding provision for offence of wrongful withholding of property by an employee of the company under the 1956 Act was incorporated in Section 630. The 1956 Act did not provide for establishment of any Special Courts to try offences under the Act. Therefore, criminal proceedings could be launched before a Court having jurisdiction to try such offence in accordance with the Code of Criminal Procedure, 1973 (“CrPC”).

3.4. This Committee received several representations from stakeholders, seeking necessary amendments to address this issue so that companies can approach courts at the place where the property has been wrongfully withheld. **In view of the same, the Committee was of the opinion that Section 435 of the 2013 Act may be amended to exclude Section 452 from its ambit. This would make Section 436 inapplicable to offences triable under Section 452 and, therefore, the jurisdiction in such cases would be determined in accordance with the CrPC.**

4. INCLUSION OF PROVISIONS OF PART IXA OF THE 1956 ACT ON PRODUCER COMPANIES

4.1. The concept of producer companies was introduced in India in 2002 with the insertion of Part IXA in the 1956 Act. The purpose behind introduction of the concept of a producer company is to regulate the Indian agrarian economy more effectively.

4.2. Any ten or more individuals, or any two or more institutions, or a combination of ten or more individuals and institutions, engaged in any activity connected with or relating to any primary produce, which includes produce arising from agriculture, handlooms and handicraft industry, cottage industry, or from any other primary activity which promotes the interest of the farmers can come together to form a producer company under the provisions of the 1956 Act.²⁶ In simpler terms, a producer company is a body corporate comprising of farmers and agriculturists who work in cooperation with each other to promote better standards of living and gain easier access to credit, technology, market etc.

²⁶ Section 581C, 1956 Act.

- 4.3. The 2013 Act does not contain any separate provisions for regulation of producer companies. By virtue of Section 465²⁷ of the 2013 Act, producer companies continue to be governed by Part IXA of 1956 Act. Considering that the 1956 Act has been repealed, it is not feasible to amend any of the provisions of Part IXA of the 1956 Act, even though these continue to remain in force. The procedure for amending provisions pertaining to producer companies even if it is assumed that such amendment is legally tenable, would become convoluted and tedious in the light of the repeal of the 1956 Act.
- 4.4. While Section 465 of the 2013 Act envisages a separate statute for governing producer companies, such statute has not yet been enacted. **Since the government is keen on promoting producer companies, it may be appropriate to take up amendments and relaxations to the applicable law for such companies instead of waiting for more time for a new law to be enacted in this regard. In light of this, the Committee was of the opinion that Part IXA of 1956 Act be inserted into the 2013 Act and Section 465 of the 2013 Act be suitably amended.**
5. **PROPOSING SETTING UP OF BENCHES OF THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL ("NCLAT")**
- 5.1. Section 408 of the 2013 Act provides for the constitution of the NCLT. Section 419 provides for the constitution of as many benches of NCLT, as may be specified by the Central Government, by notification, and as may be considered necessary, to exercise the jurisdiction, powers, and authority of the NCLT. Since 2016, in addition to the Principal Bench of the NCLT situated in New Delhi, regional benches have been set-up and operationalised at New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Cuttack, Guwahati, Hyderabad, Jaipur, Kolkata, Kochi, and Mumbai, with two more approved to be set-up this year, at Amaravati and Indore.²⁸
- 5.2. While the 2013 Act bestows the power to notify new benches of the NCLT with the Central Government, a similar power has not been provided in relation to the NCLAT. The Committee was of the view that the appellate jurisdiction of

²⁷ Section 435 of the 2013 Act states that: "(i) *The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed. Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.*"

²⁸ Ministry of Corporate Affairs, notification numbers: (i) S.O. 1935 (E), dated the 1st June, 2016; (ii) S.O. 3145(E) dated 28.06.2018 (iii) S.O. 3430(E) dated 12.07.2018; (iv) S.O. 3683(E) dated 27.07.2018; and (v) S.O. 1216(E) dated 08.03.2019.

the NCLAT is far reaching, as it exercises appellate powers under three key economic legislations- the Competition Act, 2002²⁹, the IBC³⁰ and the 2013 Act³¹. Due to the variety and amount of matters that are to be dealt with by the NCLAT, the Committee agreed that creation of specialised benches of the NCLAT should be enabled. It was also noted that benches of the NCLAT, in places other than New Delhi, will aid enabling smoother access for litigants and parties to litigation. **Therefore, the Committee decided that suitable amendments should be made to the 2013 Act to empower the Central Government to set up benches of NCLAT, through notification.**

5.3. The Committee was of the view that similar specialised benches should also be created in NCLTs, considering the quantum and variety of matters dealt with by NCLTs. In this regard, it was noted that Section 419 already permits the Central Government to establish such benches through notification, and thus any amendment to the law may not be required. **Therefore, the Committee recommended that the Central Government may consider notifying specialised benches for NCLTs. Further, keeping in view the number of cases being filed/ disposed of in the NCLT, the Committee felt that the number of benches of NCLT should be increased substantially for matters under both the statutes, i.e. the 2013 Act as well as the IBC.**

6. PROVISIONS FOR ALLOWING PAYMENT OF REMUNERATION TO NON-EXECUTIVE DIRECTORS IN CASE OF INADEQUACY OF PROFITS

6.1. Sections 197 and 198 of the 2013 Act set out the provisions for the remuneration payable by a public company to its executive directors (including whole-time directors, managing directors and managers) and non-executive directors (other than whole-time directors, managing directors). Section 197(3) provides that if a company has no profits or its profits are inadequate, then the company shall not pay any remuneration (other than sitting fee) to its directors, including managing director, whole-time director or manager, except as provided under Schedule V.

6.2. The abovementioned provisions read together provide for remuneration payable to executive directors in every case, including in case of inadequacy of profits or losses. While Section II of Part II of Schedule V of the 2013 Act provides remuneration payable to managerial persons where the company has no or inadequate profits, similar provisioning has not been done for non-executive directors. A view was expressed that modification in Schedule V may

²⁹ Section 53A, Competition Act, 2002.

³⁰ Section 61, IBC.

³¹ Section 421, 2013 Act.

be adequate to recognise payment of remuneration to non-executive directors, even in case of losses or inadequate profits.

6.3. Multiple stakeholder representations have been received by the Government regarding this inconsistency. Stakeholders have suggested that the model of shareholder or creditor approval followed for remuneration to executive directors may be extended to non-executive directors as well. The Committee also noted that in case of independent directors, Section 149(9) provides that *“notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.”*

6.4. **The Committee noted that non-executive directors, including independent directors, devote their valuable time and have experience to give critical advice to the company. Therefore, they should be appropriately compensated for the same even in case of inadequacy of profits or losses as is permissible for executive directors. The Committee also discussed the crucial role played by independent directors of a company in terms of bringing objectivity into the functioning of the Board and improving its effectiveness. The Committee also noted the need for companies to adopt remuneration policies that attract and retain talented and motivated directors. It was felt that inconsistency in payment of remuneration in case of inadequacy of profits or losses to executive directors vis-à-vis non-executive directors would dis-incentivise the latter. Therefore, Committee concluded that it would be appropriate to bring specific provisions in this regard in Section 149 and 197 before any amendment is made to Schedule V in this regard.**

7. RELAXATION OF PROVISIONS RELATING TO PAYMENT OF ADDITIONAL FEES UNDER THE THIRD PROVISO TO SECTION 403(1)

7.1. Section 403(1) of the 2013 Act provides the fee for filing of any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered. Section 403(1) has 3 provisos, and each of these provisos provide for different requirements w.r.t. filing of documents with RoC: (i) *first*, where there has been a default in filing of annual returns and financial statements specifically; (ii) *second*, where there has been a default in the filing of any other document under the 2013 Act; and (iii) *third*, where there has been a default in filing on two or more occasions.

7.2. While the third proviso to Section 403(1) was inserted pursuant to the recommendations of CLC 2016³², this proviso is yet to be commenced. As per the third proviso to Section 403(1), where there has been a default on two or more occasions, the higher additional fee payable shall be such as may be prescribed and which shall not be less than twice the additional fee provided as per the first or the second proviso. The Committee discussed that one of the reasons behind non-operationalisation of the third proviso is that it may be highly onerous for companies who have defaulted in complying with the requisite obligations. Notably, representations have been received from the industry that the fee provided in the third proviso to Section 403(1) will be disproportionately burdensome.

7.3. **The Committee was of the view that the exponential fee under the third proviso in its present form may be highly onerous, in light of the daily and continuing additional fees, starting from the first instance of default. While some additional fee may have to be provided for repeated defaults, the specific threshold provided in the third proviso may not be commensurate with minor non-compliances. Therefore, the Committee agreed that the third proviso to Section 403(1) should be amended to remove the expression “more than twice the amount of additional fee already prescribed in the first or second proviso”. The Committee also felt that the third proviso should be applicable only in respect of certain defaults which may be prescribed by way of rules/notification.**

8. EXTENDING APPLICABILITY OF SECTION 446B

8.1. Section 446B of the 2013 Act provides that if a one person company or a small company fails to comply with Sections 92(5), 117(2), or 137(3), such company and its officer in default shall be liable to a penalty which shall not be more than half of the penalty specified in the respective sections. CLC 2016 had made recommendation for the same. Small companies and one person companies are allowed several relaxations and exemptions under the 2013 Act in order to reduce corporate compliances for such companies whilst promoting corporatisation of small entrepreneurs and businesses. It is in keeping with this spirit that there are reduced penalties for non-compliance of certain provisions of the 2013 Act by such companies.

8.2. To further this objective, the Committee deliberated upon whether to extend the scope of Section 446B to all civil penalties provisions that may be applicable to a small company or a one person company, as the case may be. **Noting the**

³² Ministry of Corporate Affairs, Government of India, ‘Report of the Companies Law Committee’ (February 2016) para 22.2-22.3.

nature of one person and small companies, the Committee discussed that there was merit in the proposal to enhance the relaxation available under Section 446B to all provisions applicable to small companies and one person companies. It was agreed that these relaxations would help promote ease of living for small corporates and encourage small entrepreneurs to corporatise their businesses. Therefore, it was decided that the scope of Section 446B of the 2013 Act should be extended to apply to all provisions in relation to one person and small companies, instead of being limited to the provisions mentioned therein.

- 8.3. Further, the Committee also deliberated if the relaxations proposed above should also be made available to farmer producer organisations (“FPOs”). FPOs are organisations formed for the purpose of agricultural activities, and whose shareholders comprise of farmer-producers.³³ FPOs are engaged in trading related activities of the transaction of primary produce, work for the benefit of the farmer-producer and part of their benefits are divided amongst the farmer-producers.³⁴ They also have the potential of integrating traditionally fragmented supply chains.
- 8.4. Recently, there have been a slew of reforms in the agricultural industry by the Government with the objective of development and promotion of FPOs. The most notable of these are the Union Budget announcements of: (i) the 2019-2020 proposal to form 10,000 FPOs in the next five years; and (ii) the 2018-2019 proposal of schemes to provide financial support to FPOs and tax exemptions for FPOs with a turnover of up to Rs. 100 Crores.
- 8.5. FPOs may adopt various structures in terms of their formation, such as cooperatives societies, societies, trusts, body corporates etc.³⁵ FPOs which are registered as body corporates are known as ‘producer companies’. Producer Companies are still governed by provisions of Part IXA, of the 1956 Act, which also contains the specified objects and activities of such companies. Section 465 of the 2013 Act states that these provisions shall be applicable *mutatis mutandis*

³³ See Ministry of Agriculture, Government of India, ‘Policy and Process Guidelines for Farmer Producer Organisations’ https://mofpi.nic.in/sites/default/files/fpo_policy_process_guidelines_1_april_2013.pdf accessed 25 October 2019.

³⁴ Kushankur Dey, *Determinants of Performance and Viability of Farmer Producer Companies in India* (September 2018, Economic and Politically Weekly) Vol. 53, Issue No. 35 <https://www.epw.in/journal/2018/35/special-articles/farmer-producer-companies-india.html> accessed 25 October 2019.

³⁵ NABARD, ‘Farmer Producer Organisation’ (2015) p. 1 <https://www.nabard.org/demo/auth/writereaddata/File/FARMER%20PRODUCER%20ORGANISATIONS.pdf> accessed 25 October 2019.

in a manner as if the 1956 Act has not been repealed, until a special Act is enacted for producer companies. The Committee has already dealt with the recommendation of insertion of Part IXA into the 2013 Act after suitable amendments, after which producer companies will be governed by the new provisions under the 2013 Act (*See Chapter 2 paragraph 4 above*).

8.6. **The Committee discussed that reducing corporate compliances would help promote formation of FPOs structured as producer companies, since most of the existing FPOs are currently in a nascent stage and the compliances often prove to be too onerous for such organisations. Accordingly, the Committee decided that Section 446B should be amended to also include producer companies within its ambit.**

8.7. Similarly, it was discussed that start-ups are companies that are at a nascent stage of their operations and may require incentives and support to grow. **In line with the Government's policy to promote supportive regulation for start-ups, the Committee agreed that start-ups may also be included within the ambit of the relaxation in Section 446B.**

9. **EXCLUSION OF CERTAIN COMPANIES/ BODIES CORPORATE FROM SECTION 89 AND CHAPTER XXII**

9.1. Section 89 of the 2013 Act makes declaration of holding of beneficial interest in shares mandatory, if a person whose name has been entered in the register of members does not hold beneficial interest in the shares.

9.2. Stakeholders have suggested that an exemption should be provided for declaration of beneficial interest for an Indian company that may raise global depository receipts ("GDRs") in International Financial Services Centre Gujarat International Finance Tec-City ("IFSC GIFT City"). While Section 90(1) allows the Central Government to exempt application of this provision to a class or classes of persons from declaring significant beneficial ownership, a similar power has not been provided under Section 89. The Committee noted this disparity, insofar that if exempting power is provided for declaration of significant beneficial ownership, it should also be provided for declaration of beneficial ownership. **Therefore, the Committee agreed that Section 89 should be amended to allow the Central Government to exempt application of this provision to a class or classes of persons, as may be prescribed.**

9.3. Chapter XXII of the 2013 Act lays down certain provisions applicable to companies incorporated outside India but have a place of business in India. Stakeholders have also suggested that application of Chapter XXII should be specifically exempted for companies incorporated outside India that may be

engaged in business in International Financial Services Centre (“IFSC”) as IFSC is deemed to be a foreign jurisdiction. The IFSC Task Force under the Chairmanship of Hon’ble Minister of State for Finance has also recommended the above mentioned changes. **The Committee agreed with this recommendation and noted that rationalisation of compliances would help promote ease of business and attract investment. Therefore, it was decided that suitable amendments be made to the 2013 Act to enable the Central Government to prescribe classes of bodies corporate (including foreign companies) which would be exempt from applicability of Chapter XXII.**

10. REDUCTION OF TIMELINES FOR SPEEDING UP RIGHTS ISSUE UNDER SECTION 62

10.1. A rights issue is an option exercisable by existing shareholders of a company to purchase further share capital in proportion to their current holding, which is exercisable for a specified period.³⁶ Companies typically pursue rights issue as an avenue to raise funds for various reasons, ranging from expansion or acquisitions to paying down debts. Section 62 of 2013 Act, governs this process and, provides that the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer.

10.2. Earlier this year, SEBI issued a discussion paper reviewing the process of rights issue.³⁷ The paper highlighted the need to reduce the timelines in both the pre-issue opening phase and after issue closure to better serve the interests of both the issuers and investors. It also proposed several measures for the same by making amendments to the regulatory mechanism under relevant SEBI regulations. Through this, the timeline from the date of the board meeting to decide upon the rights issue to the date of listing of shares was proposed to be cut down from 55-58 days to roughly 31 days. In line with this, the Committee observed that as per market practice, the issuance of an offer completely closes within 2-3 days and allotment is completed within 5-7 days. The Committee was of the view that, in light of market practices, keeping the issue period open for 15 days under Section 62 of the 2013 Act is required to be reviewed.

10.3. Therefore, it was agreed that Section 62(1) of the 2013 Act be amended to enable the Central Government to prescribe a shorter time period than the mandatory 15 days’ time period provided in this provision.

³⁶ Regulation 2(xx), SEBI ICDR Regulations.

³⁷ SEBI, ‘Discussion Paper on Review of Rights Issue Process’, (21 May 2019) <https://www.sebi.gov.in/reports/reports/may-2019/discussion-paper-on-review-of-rights-issue-process_43049.html> accessed on 18 October 2019.

11. EXTENDING EXEMPTIONS FOR FILING OF CERTAIN RESOLUTIONS TO NON-BANKING FINANCIAL COMPANIES (“NBFCs”) UNDER SECTION 117

11.1. Section 117(1) of the 2013 Act mandates that a copy of every resolution or agreement has to *inter alia* be filed with the RoC. Sub-section (3) of Section 117 lays down the matters in respect of which such filings need to be made, for example, special resolutions, resolutions for winding up the company, etc.

11.2. In terms of Section 117(3)(g) read with Section 179(3)(f), companies are required to file copies of resolutions passed to grant loans or give guarantees or provide security in respect of loans. In relation to this requirement under Sections 117(3)(g) and 179(3)(f), the Report of CLC 2016 noted that “...*providing such information by banks may violate their confidentiality obligations towards their customers.*”³⁸ Accordingly, CLC 2016 recommended that an exemption be made for banks in this regard. The 2013 Act was consequently amended to add a proviso to Section 117(3)(g) to exempt banks from filing resolutions passed to grant loans, or give guarantee, or security in respect of loans with the RoC. However, a similar exemption is not available for NBFCs.

11.3. The Committee discussed that many NBFCs now engage in lending activities in their regular course of business, similar to the manner in which banks engage in such activities. Since lending for such NBFCs takes place in their ordinary course of business, filing resolutions for all lending related matters may be burdensome and affect confidentiality. **Therefore, the Committee agreed that the exemption provided in the second proviso to Section 117(3) may be extended to certain classes of NBFCs registered under Chapter III-B of the RBI Act, 1934, in consultation with the Reserve Bank of India (“RBI”). Thus, Section 117(3) of the 2013 Act may be amended to provide an exemption for such classes of NBFCs as may be prescribed by the Central Government in consultation with the RBI.**

12. EXEMPTION FOR CERTAIN PRIVATE PLACEMENT REQUIREMENTS FOR QUALIFIED INSTITUTIONAL PLACEMENTS (“QIPs”)

12.1. The Companies (Amendment) Act, 2017 (“CAA 2017”) omitted several clauses of Section 26 that required certain matters to be stated in the prospectus. These matters are now to be specified by the SEBI in consultation with the Central Government. The rationale for this amendment, as observed in the CLC 2016 report, was reduction of the volume of disclosures following suggestions from

³⁸ Ministry of Corporate Affairs, Government of India, ‘Report of the Companies Law Committee’ (February 2016) para 7.16.

stakeholders that the offer documents had become “*too long, too detailed, and repetitive as also too difficult to understand.*”³⁹ This was also followed by an overhaul of the SEBI (Issue of Capital and Disclosure Requirements) Regulations in 2018 (“**SEBI ICDR Regulations**”) with the same objective.

12.2. Similarly, the Committee observed that there is currently a duplication of regulations for disclosures and other procedural requirements to be made for QIPs for listed companies. These are currently governed by Section 42 of the 2013 Act read with the Companies (Prospectus and Allotment of Securities) Rules, 2014 (“**PAS Rules**”) as well as the SEBI ICDR Regulations. The 2013 Act and PAS Rules mandate the relevant procedure and filing of a ‘private placement offer cum application letter’ as given in PAS Form-4, and the SEBI ICDR Regulations mandate the procedure and filing of a ‘placement document’ as per Schedule VII of these regulations. **The Committee discussed that such duplication makes the filing of disclosures cumbersome and the overlaps between the two documents may render some disclosures unnecessary.**

12.3. **Therefore, the Committee agreed that appropriate consultations with SEBI may be undertaken to harmonise the procedure and disclosures provided in Section 42 of the 2013 Act, the PAS Rules and the SEBI ICDR Regulations. Based on such consultations, suitable amendments and exemptions to avoid any overlap in these disclosures may be taken up in the next phase, if required.**

13. ENABLING POWER TO MODIFY THRESHOLDS WHICH TRIGGER APPLICABILITY OF CORPORATE SOCIAL RESPONSIBILITY (“CSR”) PROVISIONS

13.1. Section 135 of the 2013 Act prescribes a mandatory spending of two percent of average net profits of the company on CSR activities made during the three immediately preceding financial years for all companies that meet the specified financial thresholds (based on net worth, turnover, or net profit). It also mandates the constitution of a CSR Committee which formulates a CSR policy, that indicate the activities to be undertaken by the company in areas or subjects specified in Schedule VII of the 2013 Act.

13.2. The CAA 2019 amended Section 135 of the 2013 Act, keeping in mind the objective of improving CSR compliance and the experience gained thus far from its implementation. In light of this, the Committee observed that there may arise a need for the Central Government to re-evaluate and revise the net

³⁹ Ministry of Corporate Affairs, Government of India, ‘Report of the Companies Law Committee’ (February 2016) para 3.1.

worth/ turnover/ net profit thresholds specified in Section 135(1) from time to time to suit the changing requirements of the economy. **The Committee noted the merit in ensuring that static financial thresholds do not come in the way of corporate-driven socio-economic development and environmental conservation. In order to keep such revision process timely, the Committee recommended insertion of suitable provisions in the Section 135(1), which would enable the Central Government to enhance such limits by way of rules.**

14. REVISION OF PROVISIONS ON DISQUALIFICATION OF DIRECTORS

14.1. The CLC 2016 noted that provision relating to vacation of directors under Section 167(1)(a), in case of any disqualification incurred under Section 164, needs to be reviewed as the same results in automatic vacation from even such companies which may otherwise be compliant. It was noted that Section 164(1) covered cases where a director incurred disqualification on account of her personal incapacity, whereas the disqualification under Section 164(2) was on account of lapses made by the company in filing its annual returns and financial statements or on account of repayment of deposits or debentures. In this regard, CLC 2016 had recommended that:

“Vacancy of an office should be triggered only where a disqualification is incurred in a personal capacity and therefore, the scope of Section 167(1)(a) should be limited to only disqualifications under Section 164(1).”⁴⁰

14.2. This recommendation was, however, not reflected in CAA 2017. However, the other recommendation regarding safeguarding the tenure of the new directors was accepted. By virtue of CAA 2017, a proviso was, accordingly, inserted in Section 164(2) to provide that all directors appointed after the default has taken place under clause (a) or clause (b) would be safeguarded from disqualification for a period of six months. Therefore, such directors would get six months from the date of their appointment to make good the default of the company. A proviso was also inserted in Section 167(1)(a) to provide that the vacation in respect of Section 164(2) would only operate in all the companies other than where the default was done. This implied that on account of defaults made under Section 164(2)(a) and Section 164(2)(b), the directors of the company would stand disqualified from an appointment or re-appointment in all companies. But their office would not get vacated in the companies where the default was committed. This provision was made to ensure that defaulting

⁴⁰ Ministry of Corporate Affairs, Government of India, ‘Report of the Companies Law Committee’ (February 2016) para 11.13.

directors be made responsible for the defaults and be allowed to continue to rectify them.

- 14.3. The Committee was of the opinion that the earlier recommendation of CLC 2016, insofar as it pertains to applicability of Section 164(1) for triggering vacation of office under Section 167(1)(a), holds merit. However, it may also be onerous to extend the provision of vacation of directorship to companies where there is no default, merely to punish the director concerned for the default made in another company. In addition, non-executive directors of the company also get covered and are also subject to vacation in companies which have not committed any default. Therefore, the Committee opined that it would be appropriate that the vacation of directorship under Section 167(1)(a) be limited to only disqualifications incurred under Section 164(1) only and not those incurred under Section 164(2).
- 14.4. Further, the recommendation of CLC 2016 to provide a period of six months to a new director to make the company compliant, before triggering disqualification, may also require review as this provision serves as a disincentive for any person willing to get appointed in the company, after its default. This provision may, therefore, continue only for defaults in filing of annual returns/ financial statements. However, it would be difficult for new directors to join a company which has defaulted in repayment of its debts, if the impending threat of disqualification is present.
- 14.5. Therefore, the Committee agreed that new directors, appointed after the expiry of one year of default referred to in Section 164(2)(b), should not be liable for disqualification in relation to such defaults.
- 14.6. The Committee, however, took note of matters pending in various courts and the recent order of the Delhi High Court on the aforementioned issue. After deliberations, the Committee felt that the aforementioned approach involves a fundamental shift in the provisions for disqualification of directors. Accordingly, it was decided that since jurisprudence on the issue is still evolving, it would be appropriate that this issue is examined in greater detail. Changes in law, as may be required, may be taken up in the next phase after there is broad agreement in all quarters.
- 14.7. Additionally, the Committee also noted that Section 164(1)(d), when read with Section 2(29), provides for disqualification in certain scenarios if a director is convicted and sentenced to imprisonment for not less than 6 months by a court in India. In this regard, the Committee felt that such conviction and sentencing of directors, when ordered by a foreign court must

also trigger a similar disqualification. Changes in law, as required, for the same may also be taken up in the next phase.

15. REVIEW OF PROVISIONS IN RESPECT OF DEBARMENT OF AUDIT FIRMS

- 15.1. Under Section 140(5) of the 2013 Act, any auditor, whether an individual or firm, who has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers and such act has been established in the final order made by NCLT, in this respect under the said section, then the auditor, by virtue of the order of the NCLT is ineligible for appointment as an auditor of any company for a period of 5 years from the date of such order. The National Financial Reporting Authority (“NFRA”) under Section 132 is also empowered to pass an order debaring any auditor, whether an individual or firm, from being appointed as an auditor, internal auditor or a valuer for a minimum period of 6 months, up to a maximum period of 10 years.
- 15.2. While the provision under Section 140(5) operates once the final determination is made by NCLT, Section 132(4)(B) gives power to NFRA to decide on the total tenure of debarment, after due process, based on the facts and circumstances. In either case, there is no provision to limit the debarment in case of an audit firm to the partner(s) who were actually involved in the wrongdoing. The Committee was of the opinion, that there may be cases, where only one or a few individuals/partners connected with such firm may be actually responsible for the fraud. In such cases, making the entire firm responsible for the actions of few individuals may be disproportionate. The issue of vicarious liability of the firm was also considered and it was felt that heavy monetary penalties on the firm could be considered, instead, in such cases.
- 15.3. While taking note of this issue in relation to debarment of audit firms under Section 140(5), the Committee first analysed the regulatory structure governing individual auditors and audit firms. Auditors derive their power from the 2013 Act and thus, punishments or penalties imposed on them for contraventions are also provided under the 2013 Act. Chartered accountants are also simultaneously regulated by the Institute of Chartered Accountants of India (“ICAI”). Further, many other authorities also seek to regulate chartered accountants for functions performed by such accountants under relevant sectoral laws. This leads to significant regulatory overlap.
- 15.4. **The Committee discussed that the regulatory body in charge of regulating a profession, herein the ICAI, should ideally be the body making key decisions relating to debarment and right to practice by a professional. It was**

highlighted that the right to practice for professionals is a core requirement for exercising their right to livelihood and thus, debarment should be considered a serious punishment. Further, in light of the need for promoting efficiency and avoiding overlap, authorities (other than the ICAI) should take debarment decisions, even when provided for in relevant laws, in rare circumstances only, and should duly consider the doctrine of proportionality. In usual course, debarment actions should be executed through the ICAI, and necessary legal references and informational linkages with violations of any other laws by chartered accountants should be created so that ICAI can take timely action, wherever required. Given the complexity of the matters involved and their far reaching implications, the Committee felt that this would require a redesign of the regulatory framework of chartered accountants and changes to multiple laws. It was also expressed that the mechanism for deferred prosecution agreements may also be recognised in law for such matters. The Committee also noted that an effort for reviewing the Chartered Accountants Act, 1949 is also presently underway.

15.5. Therefore, the Committee recommended that the debarment of a firm may be an exception rather than a rule. It should only take place in cases where the firm refuses to co-operate in the proceedings in question or if the higher management of the firm is involved in the fraud. Otherwise, debarment even in case of audit firm may be restricted to only those individuals/ partners associated with the firm who were actually involved in the fraud. In order to have a holistic approach on the matter, necessary changes to the 2013 Act and the Chartered Accountants Act, 1949 may be identified after a thorough examination of all relevant issues. Accordingly, this may be taken up in the next phase.

16. REVIEW OF PENALTY FOR DELAY IN FILING THE ANNUAL RETURN/ FINANCIAL STATEMENT

16.1. The CAA 2019 amended the penal provisions relating to non-filing of annual return and financial statement and re-categorised them as civil wrongs carrying monetary penalties under the IAM framework. However, it has been noticed that the quantum of such penalty is significantly higher on the company and the officer in default. Further, Section 403 already provides for additional fees on account of delay in filing such documents, which is incremental and based on each day's delay. It was felt that penalty for late filing in addition to additional filing fee (which is levied on a per day basis) could be viewed as being onerous.

16.2. The Committee noted that as per Section 73(8) of the Central Goods and Services Tax Act, 2017 (“CGST Act”), penalty in respect of non-payment of tax or its short payment is not payable, in case the said tax, along with interest, is paid within thirty days of issue of the show cause notice. It was felt that a similar provision should be incorporated under the 2013 Act, whereby the AO would not levy any penalty against any company or its officer in respect of violations under Section 92(5) or Section 137(3), if such company files the pending documents within 30 days from the date of issue of the show-cause notice.

16.3. Therefore, the Committee opined and recommended that a provision similar to Section 73(8) of the CGST Act should be inserted to provide for a scenario where penalty would not be required to be paid if the pending documents are filed within thirty days. The Committee felt that this measure would go a long way in encouraging compliance in respect of filing of annual returns and financial statements in a timely fashion.

ANNEXURE I: CONSTITUTION OF THE COMMITTEE

F. No. 2/1/2018-CL-V
Government of India
Ministry of Corporate Affairs
'A' Wing, 5th Floor, Shastri Bhawan,
New Delhi-110001

Dated: 18th September, 2019

ORDER

Subject: Constitution of the Company Law Committee

A Committee to review the offences under the Companies Act, 2013 was constituted vide order No. 2/1/2018-CL-V dated 13.07.2018. The report of the Committee was submitted to the Hon'ble Corporate Affairs Minister on 27.08.2018. The report, *inter alia*, made recommendations for re-categorizing of certain offences into 'civil wrongs', de-dogging the NCLT and also touched upon certain essential elements of corporate governance. On the basis of recommendations made by such Committee and passage of the Companies (Amendment) Act, 2019, relevant changes have been made to the Companies Act, 2013.

2. In line with the Government's objective of promoting Ease of Living in the country by providing Ease of Doing Business to law abiding corporates, fostering improved corporate compliance for stakeholders at large and also to address emerging issues having impact on the working of corporates in the country, it has been decided to constitute a Company Law Committee for examining and making recommendations to the Government on various provisions and issues pertaining to implementation of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

3. Accordingly, the Government hereby constitutes the Company Law Committee consisting of the following members:-

S. No.	Name of Person/ Institution	- Position
1.	Secretary, MCA	- Chairman
2.	Shri T. K. Viswanathan, Ex- Secretary General, Lok Sabha	- Member
3.	Shri Uday Kotak, MD, Kotak Mahindra Bank	- Member
4.	Shri Shardul S Shroff, Executive Chairman, Shardul Amarchand Mangaldas & Co.	- Member
5.	Shri Amarjit Chopra, Senior Partner, GSA Associates, New Delhi	- Member

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6.	Shri Rajib Sekhar Sahoo, Principal Partner, SRB & Associates, Chartered Accountants, Bhubaneswar	- Member
7.	Shri Ajay Bahl, Founder and Managing Partner, AZB & Partners, Advocates & Solicitors	- Member
8.	Shri G. Ramaswamy, Partner, G. Ramaswamy & Co. Chartered Accountants, Coimbatore	- Member
9.	Shri Sidharth Birla, Chairman, Xpro India Limited	- Member
10.	Ms. Preeti Malhotra, Group President, Corporate Affairs & Governance, Smart Group	- Member
11.	Joint Secretary (Policy)	- Member Secretary

4. The terms of reference of the Committee would be as follows:-
- i. Analyze the nature of the offences (compoundable and non-compoundable) and submit its recommendation as to whether any of the offences could be re-categorized as 'civil wrongs' along with measures to optimize the compliance requirements under the Companies Act, 2013 and concomitant measures to provide further Ease of Doing Business;
 - ii. Examine the feasibility of introducing settlement mechanism, deferred prosecution agreement, etc., within the fold of the Companies Act, 2013;
 - iii. Study the existing framework under the Limited Liability Partnership Act, 2008 and suggest measures to plug the gaps, if any, while at the same time enhancing the Ease of Doing Business;
 - iv. Propose measures to further de-clog and improve the functioning of the NCLT;
 - v. Suggest measures for removing any bottlenecks in the overall functioning of the statutory bodies like SFIO, IEPFA, NFRA, etc. under the Act ;
 - vi. Identify specific provisions under the Companies Act, 2013 and the Limited Liability Partnership Act, 2008 which are required to be amended to bring about greater Ease of Living for the corporate stakeholders, including but not restricted to review of Forms under the two Acts;
 - vii. Any other relevant recommendation as it may deem necessary.
5. The Chairperson of the Committee may also invite or co-opt any other practitioners, experts (subject specific) who have knowledge or experience in the field of corporate law and representatives from other Ministries or regulators. The Committee may also consult other stakeholders as part of its deliberations. M/s Vidhi Centre for Legal Policy, which is a not-for-profit organization, shall provide legal research assistance to the Committee.
6. The non-official members of the Committee shall be eligible for travelling, conveyance and other allowances as per extant government instructions, as may be decided by Chairperson of the Committee.

7. The Committee shall submit its recommendations in phases and subject-wise to the Government from time to time as may be decided by the Chairperson of the Committee.
8. The Committee shall initially have a tenure of one year from the date of its first meeting.
9. This issues with the approval of Competent Authority.


(Pranay Chaturvedi)
Deputy Director
011-23071190

To
All members
Copy to- PS to CAM
PS to MoS, CA
PPS to Secretary, MCA

ANNEXURE II: CATEGORISATION OF COMPOUNDABLE OFFENCES UNDER THE 2013 ACT

Sr. No.	Section under the 2013 Act ⁴¹	Key Ingredients of the Provision
Category A Offences: Non-compliance of the orders of Central Government/NCLT/RD or RoC		
1.	16(3)	Non-compliance with order of the RD directing change of name of company.
2.	48(5)	Variation of the rights of shareholders of any class with consent of three fourth of the holders.
3.	59(5)	Grievance before NCLT regarding entries in register of members.
4.	66(11)	Publication of order of the NCLT confirming reduction of share capital.
5.	71(11)	Non-compliance with order of the NCLT regarding failure to redeem debentures on maturity or in payment of interest.
6.	99	Default in holding annual general meetings or non-compliance of the order to hold meeting of members or any other orders of the NCLT.
7.	206(7)	Failure to furnish information or explanation or additional documents with respect to any documents filed by the company required by the RoC.
8.	221(2)	Non-compliance of the NCLT's order restricting any removal, transfer, or disposal of funds, assets, or properties of the company on grounds of being prejudicial to creditor/shareholder/public interest.

⁴¹ Please note that all Sections marked with * have already been shifted to the IAM framework pursuant to recommendations of the Offences Committee and the CAA 2019.

9.	222(2)	Non-compliance of the NCLT's order restricting issuance or transfer of securities while investigating the company.
10.	232(8)	Punishment for failure to comply with obligations imposed by Section 232 in relation to merger and amalgamation.
11.	242(8)	Powers of NCLT to pass an order when an application has been made under Section 241 for relief in a case of oppression and mismanagement.
12.	243(2)	Non-compliance of order of NCLT under Section 241(3) by any person who knowingly acts as a managing director or other director or manager of a company despite having been terminated under Section 242(2) or adjudicated as an unfit and improper person, and every other director of the company who is knowingly a party to such contravention.
13.	405(4)	Punishment for non-compliance with orders of the Central Government to direct companies to furnish certain information.
14.	441(5)	Non-compliance with order of compounding of the NCLT or the RD.
15.	454(8)	Company or officer of the company in default does not pay the penalty within a period of 90 days.

Category B Offences:
Default in respect of maintenance of certain records in the registered office of the company

1.	56(6)	Failure to comply with the procedural requirements given in the Section for the manner in which the transfer of securities is required to be done.
2.	88(5)	Failure to maintain members' register, debenture-holders register and register of other security holders.
3.	90(11)	Failure on behalf of company to maintain a register of significant beneficial owners.
4.	128(6)	Failure to maintain books of accounts of the company at its registered office and its inspection thereof by any director.

Category C Offences:

Defaults on account of non-disclosures of interest of persons to the company, which vitiates the records of the company		
1.	89(5)	Failure to make declaration the registered owner and the beneficial owner in respect of shares.
2.	90(10)	Failure to make declaration of interest by the significant beneficial owner.
3.	184 (4)	Contravention of the provisions mandating disclosure of interest by the director in the first Board meeting every financial year or wherever there is any change in relation to any contract or arrangement.
Category D Offences: Defaults related to certain corporate governance norms		
1.	53(3)*	Punishment for contravention of provisions prohibiting issues of shares at discount.
2.	165(6)*	Punishment for accepting directorships beyond specified limit.
3.	191(5)*	Contravention of provisions prohibiting payment to director made in case of loss of office, except when made under certain circumstances and subject to prescribed limits.
4.	197(15)*	Contravention of provisions on overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.
5.	203(5)*	Default in complying with provisions on appointment of key managerial personnel in certain classes of companies.
Category E Offences: Technical defaults relating to intimation of certain information by filing forms with the RoC or in sending of notices to the stakeholders		
1.	64(2)*	Failure to give notice to the RoC for alteration of share capital.
2.	86(1)	Contravention of the provision of Chapter VI dealing with duty to register charges, to report their satisfaction within prescribed timelines and the duty to maintain register of charges.

3.	89(7)	Default by company in filing a return with RoC within the prescribed time after receiving a declaration of beneficial interest in shares from a person.
4.	92(5)*	Default in filing of annual return within the specified period.
5.	102(5)*	Contravention of provision regarding attaching a statement concerning special business in the notice calling for general meeting and the information to be stated therein.
6.	105(3)*	Default in giving declaration regarding provision of appointment of proxy in the notice calling a general meeting.
7.	117(2)*	Default in filing of certain resolutions and agreements with the RoC.
8.	121(3)*	Failure to prepare a report on each annual general meeting by a listed public company and filing of the same with the RoC.
9.	137(3)*	Failure in filing a copy of the financial statement with the RoC.
10.	140(3)*	Contravention of the requirement of filing a statement with the RoC after resigning as an auditor of a company.
11.	157(2)*	Failure on behalf of Company to inform DIN to RoC.
12.	159*	Other contraventions related to allotment or intimation of DIN.
13.	238(3)*	Contravention of provisions on requirement of registration of offer of schemes involving transfer of shares.

Category F Offences:

Defaults involving substantial violations which may affect the going concern nature of the company or are contrary larger public interest or otherwise involve serious implications in relation to the stakeholders

1.	8(11)	Failure of the company to comply with the requirements of the special license given to Section 8 companies.
2.	26(9)	Contravention of matters prescribed to be stated in prospectus.
3.	40(5)	Default in complying with requirements given in the Section for public offer.
4.	68(11)	Default in complying with requirements of this Section for buy-back.

5.	74(3)	Failure of the company to repay deposits made before the commencement of the 2013 Act beyond 3 years or the period granted by the NCLT.
6.	76A	Non-compliance of conditions for acceptance or repayment of deposits under Section 73 or 76 of the 2013 Act. In case of willful contravention, the said person shall be punished for fraud as per Section 447.
7.	92(6)	Contravention of the requirements under this Section by a company secretary in practice certifying annual returns.
8.	105(5)	Fine for issuance of invitation to appoint proxies to any member entitled to attend a meeting in her name.
9.	124(7)	Failure to comply with the requirements given in this Section for dealing with Unpaid Dividend etc.
10.	129(7)	Non-compliance of the provisions relating to conditions prescribed with respect to financial statements and accounting standards.
11.	134(8)	Contravention of the requirements given in the Section for financial statements and board reports.
12.	143(15)	Violation of the obligation to report fraud that she has come across in the course of performance of duties by auditor, company secretary in practice or cost accountant.
13.	147(1)	Default in complying with provisions of Chapter X
14.	147(2)	Contravention by the auditor of the provisions relating to her functions and duties given in specified sections.
15.	148(8)	Non-compliance of the provisions relating to conditions prescribed with respect to audit of items of cost for certain companies.
16.	166(7)	Contravention by the director of the provisions relating to her functions and duties given in the specified sections.

17.	167(2)	Punishment for act of continuing to act as director even upon becoming liable for vacation of office under the Section.
18.	178(8)	Contravention of the provisions relating to Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee.
19.	185(4)	Contravention of provision restricting extending loan to directors.
20.	187(4)	Contravention of the provisions regarding holding of investment by a company.
21.	188(5)	Punishment for contravention of provisions regarding related party transactions by a director or employee of company.
22.	204(4)	Contravention of provisions mandating secretarial audit for certain classes of companies.
23.	247(3)	Contravention of provisions relating to valuation by valuer.
24.	249(2)	Punishment for filing application for removal of name from register of companies in contravention of the restrictions laid down in the Section.
25.	392	Punishment for contravention of provisions related to foreign companies.
26.	447	Punishment where fraud involves a certain specified amount or turnover of the company, whichever is lower, and does not involve public interest.
27.	451(1)	Punishment for repeated default on second or subsequent occasions within the period of 3 years.
28.	452(1)	Punishment for wrongful withholding of property.
29.	464(3)	Punishment for contravention of prohibition of association or partnership of persons exceeding certain number.
30.	135(7) (Yet to be commenced)	Contravention of provisions of corporate social responsibility and manner of dealing with any unspent amount under it.

Category G Offences: Default related to liquidation proceedings		
1.	274(4)	Contravention of provisions relating to filing of books of accounts by a director/officer of company during winding up by NCLT.
2.	284(2)	Promoters, directors, etc. to cooperate with the Company Liquidator.
3.	302(4)	Dissolution of company by NCLT.
4.	342(6)	Prosecution of delinquent officers and members of company.
5.	344(2)	Non-compliance of provision to include on company's documents a statement about company's liquidation.
6.	347(4)	Contravention of directions of the Central Government in relation to disposal of books and papers of the company which has been wound up.
7.	348(6)	Contravention of provisions regarding information related to pending liquidations by Company Liquidator.
8.	348(7)	Punishment for wilful default in contravention of provisions regarding auditing of statement by Company Liquidator.
9.	356(2)	Powers of the NCLT to declare dissolution of company void.
Category H Offences: Defaults not specifically punishable under any provision, but made punishable through an omnibus clause		
1.	172	Punishment for contravention of any provisions relating to appointment and qualifications of directors.
2.	450	Fine for contravention of any of the provisions of the 2013 Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to

		any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in the 2013 Act.
3.	469(3)	Central Government has power to prescribe rules and such rules may prescribe punishment by way of fine.

ANNEXURE III: OFFENCES PROPOSED TO BE SHIFTED TO IAM ALONG WITH SUGGESTED QUANTUM OF PENALTY

Sr. No.	Section No. in the 2013 Act	Existing Provision under the 2013 Act	Suggested quantum of penalty and additional remarks, if any
Category A Offences:			
Non-compliance of the orders of Central Government/NCLT/RD or RoC			
1.	232(8) Punishment for failure to comply with obligations imposed by Section 232 in relation to merger and amalgamation.	If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, 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 such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.	In case of default, a penalty of twenty thousand rupees shall be levied on the transferor company or the transferee company, as the case may be, and on every officer who is in default, and in case of continuing failure, a further penalty shall be levied, of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of three lakh rupees.
2.	405(4) Punishment for non-compliance with orders of	If any company fails to comply with an order made under sub-section (1) or sub-section (3), or knowingly furnishes any information or statistics which is incorrect	In case of default, a penalty of twenty thousand rupees shall be levied on the company and on every officer who is in default shall be liable to and in case of

	the Central Government to direct companies to furnish certain information.	or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand 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 three lakh rupees, or with both.	continuing failure, a further penalty shall be levied, of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of three lakh rupees.
Category B Offences:			
Default in respect of maintenance of certain records in the registered office of the company			
3.	56(6) Failure to comply with the procedural requirements given in the Section for the manner in which the transfer of securities is required to be done.	Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand 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 ten thousand rupees but which may extend to one lakh rupees.	In case of default, a fixed penalty of fifty thousand rupees shall be levied on the company and officer who is in default, for each default.
4.	88(5) Failure to maintain	If a company does not maintain a register of members or debenture-holders or other security	In case of default, a fixed penalty of one lakh rupees in case of company and twenty-five thousand rupees

	members' register, debenture-holders register and register of other security holders.	holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three 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.	in case of officer shall be levied, for each default.
5.	90(11) Failure on behalf of company to maintain a register of significant beneficial owners.	If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty 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	In case of default, the company shall be levied 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 rupees and every officer of the company who is in default shall be levied a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of two hundred rupees for each day after the first during which such failure continues,

		first during which the failure continues.	subject to a maximum of one lakh rupees.
Category C Offences:			
Defaults on account of non-disclosures of interest of persons to the company, which vitiates the records of the company			
6.	89(5) Failure to make declaration the registered owner and the beneficial owner in respect of shares.	If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand 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.	In case of default, a penalty of fifty thousand rupees shall be levied on such person, and where the default is a continuing one, a further penalty shall be levied, of one hundred rupees for every day after the first during which the failure continues, subject to a maximum of one lakh rupees. (The element of discretion may be removed by omitting the words " <i>without any reasonable cause.</i> ")
7.	90(10) Failure to make declaration of interest by the significant beneficial owner.	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	In case of default, a penalty of fifty thousand rupees shall be levied on such person, and where the default is a continuing one, a further penalty shall be levied, of one hundred rupees for every day after the first during which the failure continues, subject to a maximum of one lakh rupees.

		first during which the failure continues.	
8.	184(4) Contravention of the provisions mandating disclosure of interest by the director in the first Board meeting every financial year or wherever there is any change in relation to any contract or arrangement.	If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both.	In case of default, a fixed penalty of fifty thousand rupees shall be levied on such director, for each default.

Category E Offences:
Technical defaults relating to intimation of certain information by filing forms with the RoC or in sending of notices to the stakeholders

9.	86(1) Contravention of the provision of Chapter VI dealing with duty to register charges, to report their satisfaction within prescribed timelines and the duty to	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	In case of default, a fixed penalty of one lakh rupees in case of company and twenty-five thousand rupees in case of officer shall be levied, for each default. (Significantly, higher <i>ad valorem</i> fee is provided for delays in registration of charges created on or after the commencement of the CAA 2019. Therefore, it was felt that overall penalty may be reduced.)
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	maintain register of charges.	but which may extend to one lakh rupees, or with both.	
10.	89(7) Company to file a return with Registrar within the prescribed time after receiving a declaration of beneficial interest in shares from a person.	If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand 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.	In case of default, a penalty of two hundred rupees per day shall be levied on the company and officer who is in default, for each default, subject to a maximum of three lakh rupees in case of company and one lakh rupees in case of officer in default.

Category F Offences:

Defaults involving substantial violations which may affect the going concern nature of the company or are contrary larger public interest or otherwise involve serious implications in relation to the stakeholders

11.	92(6) Contravention of the requirements under this Section by a company secretary in practice	If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.	In case of default, a fixed penalty of one lakh rupees shall be levied on the company secretary, for each default.
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	certifying annual returns.		
12.	105(5) Fine for issuance of invitation to appoint proxies to any member entitled to attend a meeting in her name.	If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees.	In case of default, a fixed penalty of fifty thousand rupees shall be levied on every officer in default, for each default.
13.	124(7) Failure to comply with the requirements given in this Section for dealing with Unpaid Dividend etc.	If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	In case of default, the company shall be levied a penalty of one lakh rupees and in case of continuing failure, a 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 and every officer of the company who is in default shall be levied a penalty of twenty-five thousand rupees and in case of continuing failure, further penalty shall be levied, of

			one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.
14.	134(8) Contravention of the requirements given in the Section for financial statements and board reports.	If a company contravenes the provisions of this section, 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 the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.	In case of default, a fixed penalty of one lakh rupees in case of company and twenty-five thousand rupees in case of officer shall be levied, for each default.
15.	135(7) Contravention of provisions of corporate social responsibility and manner of dealing with any unspent amount under it.	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 thousand rupees but	In case of default, the company shall be levied a penalty equal to twice the unspent CSR amount which is required to be transferred to the Account under sub-section (6) or one crore rupees, whichever is lower, whereas the officer in default shall be levied a penalty equal to one tenth of the unspent CSR amount which is required to be transferred to the Account under sub-

	(Yet to be commenced)	which may extend to five lakh rupees, or with both.	section (6) or two lakh rupees, which is lower.
16.	143(15) Violation of the obligation to report fraud that she has come across in the course of performance of duties by auditor, company secretary in practice or cost accountant.	If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.	In case of default, the auditor, cost accountant, or company secretary in practice shall be levied a penalty of one lakh rupees in case of an unlisted company and of five lakh rupees in case of a listed company, for each default.
17.	178(8) Contravention of the provisions relating to Audit Committee, Nomination and Remuneration Committee, and Stakeholders Relationship Committee.	In case of any contravention of the provisions of section 177 and 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 of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.	In case of default, a fixed penalty of five lakh rupees in case of company and one lakh rupees in case of officer shall be levied, for each default. (Higher quantum of penalty has been recommended in this Section since it is applicable to listed companies and companies with high amounts of paid-up share capital / turnover / aggregate, outstanding loans, debentures and deposits.)

18.	187(4) Contravention of the provisions regarding holding of investment by a company.	If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five 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.	In case of default, a fixed penalty of one lakh rupees in case of company and twenty-five thousand rupees in case of officer shall be levied, for each default.
19.	188(5) Punishment for contravention of provisions regarding related party transactions by a director or employee of company	Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall, – (i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and (ii) In case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which	In case of default, the director or employee shall be levied a penalty of twenty-five lakh rupees in case of listed company and five lakh rupees in case of unlisted company. (Higher quantum of penalty has been recommended since related party transactions present a complex corporate governance challenge.)

		may extend to five lakh rupees.	
20.	204(4) Contravention of provisions mandating secretarial audit for certain classes of companies.	If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	In case of default, the company, every officer of the company, or the company secretary in practice who is in default, shall be levied a fixed penalty of two lakh rupees, for each default. (Higher quantum of penalty has been recommended since this Section is applicable to listed companies and companies with paid-up share capital of fifty crore rupees or more or turnover of two hundred fifty crore rupees.)
21.	247(3) (Not including the proviso) Contravention of provisions relating to valuation by valuer.	If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees: Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one	In case of default, a penalty of fifty thousand rupees shall be levied on the valuer, for each default. (Such penalty would be imposed without prejudice to the liabilities of the valuer to refund remuneration or pay damages under sub-section (4). Further, since the proviso to sub-section (3) incorporates an element of fraud, the Committee recommended that this proviso should be left untouched.)

		lakh rupees but which may extend to five lakh rupees.	
Category H Offences:			
Defaults not specifically punishable under any provision, but made punishable through an omnibus clause			
22.	172 Punishment for contravention of any provisions relating to appointment and qualifications of directors.	If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.	In case of default, a penalty of fifty thousand rupees shall be levied on the company and every officer, for each default, and where the default is a continuing one, a further penalty of one hundred rupees shall be levied for every day after the first during which the failure continues, subject to a maximum of three lakh rupees in case of company and one lakh rupees in case of officer.
23.	450 Fine for contravention of any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction,	If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this	In case of default, a penalty of ten thousand rupees shall be levied on the company and every officer of the company or such other person who is in default, and where the default is continuing one, a further penalty of one thousand rupees shall be levied for every day after the first during which the default continues subject to a maximum penalty of fifty thousand rupees in case of officer in default or any other

	<p>consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act.</p>	<p>Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.</p>	<p>person and two lakh rupees in case of company.</p>
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ANNEXURE IV: CHANGES TO EXISTING PENALTY PROVISIONS

Sr. No.	Provisions of the 2013 Act	Recommended modified penalties ⁴²	Changes proposed
1.	64(2) Failure/delay in filing notice for alteration of share capital	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 hundred rupees for each day during which such default continues, or five lakh rupees whichever is less <u>subject to a maximum of two lakh rupees in case of company and fifty thousand rupees in case of officer in default.</u>	The penalty in case of continuing default may be reduced to Rs. 100 per day instead of Rs. 1,000 per day and maximum penalty may be capped at Rs. 2 lakh in case of company and Rs. 50,000 in case of officer in default.
2.	92(5) Failure/delay in filing annual return.	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 ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five two lakh rupees <u>in case of company and fifty thousand rupees in case of officer in default.</u>	The penalty amount at the first instance may be reduced to Rs. 10,000 and the maximum penalty may be capped at Rs. 2 lakh in case of company and at Rs. 50,000 in case of officer in default.
3.	117(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	The penalty amount at the first instance may be reduced to Rs. 10,000 and the maximum penalty

⁴² Please note that- (i) text in ~~red and struck through~~ is meant to symbolise proposed deletions. (ii) Text in red and underline is meant to symbolise propose insertions.

	<p>Failure/delay in filing certain resolutions.</p>	<p>company shall be liable to a penalty of one lakh ten thousand rupees and in case of continuing failure, with a further penalty of five one hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five <u>two</u> 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 ten thousand rupees and in case of continuing failure, with a further penalty of five one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh fifty thousand rupees.</p>	<p>may be capped at Rs. 2 lakh for the company and Rs. 50,000 for the officer in default. The penalty in case of continuing default may be kept at Rs. 100 for each day's default.</p>
<p>4.</p>	<p>137(3) Failure/delay in filing financial statement</p>	<p>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 liable to a penalty of one ten thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees and in case of continuing failure with a further penalty of one hundred rupees for every day during which the failure continues but which shall not be more than two 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 Board with the responsibility of complying</p>	<p>The penalty amount at the first instance may be fixed at Rs. 10,000 and the maximum penalty may be capped at Rs. 2 lakh in case of company and Rs. 50,000 in case of officer in default. In case of continuing default, a penalty of Rs. 100 for each day's default may be kept.</p>

		with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of one lakh ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh fifty thousand rupees.	
5.	140(3) Failure/delay in filing statement by auditor after resignation	If the auditor does not comply with the provisions of sub-section (2), she or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five two lakh rupees.	The maximum amount of penalty may be reduced to Rs. 2 lakh instead of Rs. 5 lakh.
6.	165(6) Accepting directorships beyond specified limits	If a person accepts an appointment as a director in contravention of sub-section (1), she shall be liable to a penalty of five one thousand rupees for each day after the first during which such contravention continues, <u>subject to a maximum of two lakh rupees.</u>	The penalty for each day's default may be reduced to Rs. 1,000 and a maximum penalty of Rs. 2 lakh rupees on the defaulting directors may be provided.

ANNEXURE V: SUMMARY OF RECOMMENDATIONS

Sr No.	Provision under the 2013 Act or rules thereunder/ Topic	Nature of Recommendation
1.	2(52) Definition of listed company	To add a proviso to Section 2(52) to make a carve out for such classes of companies that have listed such securities as may be prescribed by the Central Government in consultation with SEBI. <i>(Chapter 2 Para 2)</i>
2.	8(11) Failure of the company to comply with the requirements imposed on Section 8 companies	To amend Section 8(11) to remove the punishment of imprisonment in relation to the offence mentioned therein. Thus, the offence under Section 8(11) shall be punishable with fine only. <i>(Chapter 1 Table 4 Point 4)</i>
3.	16 Non-compliance with order of the RD directing change of name of company	<p>(i) To amend the timelines provided in Section 16(1)(a) and (b) to harmonise them with changes mentioned in (ii) below.</p> <p>(ii) To substitute Section 16(3) with a new provision which provides that in case a company fails to comply with the directions given under Section 16(1) within 90 days of the directions being issued, then such company shall be assigned an auto-generated name by an order of the RD, that the company will be bound to use as its name. Further, a proviso may be added to this amended Section 16(3) to clarify that the company, to whom an auto-generated name has been provided by the RD, may alter such auto-generated name in accordance with the relevant provisions of the 2013 Act in relation to change of name of a company and its memorandum. <i>(Chapter 1 Table 3 Point 1)</i></p>

4.	26(9) Contravention of matters prescribed to be stated in prospectus	To consider amending Section 26(9) to remove the punishment of imprisonment in relation to the offence mentioned therein. Thus, the offence under Section 26(9) shall be punishable with fine only. Consultations with SEBI may be undertaken in this regard. (<i>Chapter 1 Table 4 Point 5</i>)
5.	40(5) Default in complying with the requirements for a public offer	To consider amending Section 40(5) to remove the punishment of imprisonment in relation to the offence mentioned therein. Thus, the offence mentioned in Section 40(5) shall be punishable with fine only. Consultations with SEBI may be undertaken in this regard. (<i>Chapter 1 Table 4 Point 6</i>)
6.	48(5) Variation of the rights of shareholders of any class with consent of three-fourth of the holders	To omit Section 48(5). (<i>Chapter 1 Table 1 Point 1</i>)
7.	56(6) Failure to comply with the procedural requirements in relation to the manner of transfer of securities	To amend Section 56(6) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. (<i>Chapter 1 Para 2.6-2.7</i>)
8.	59(5) Grievance before NCLT regarding entries in register of members	To omit Section 59(5). (<i>Chapter 1 Table 1 Point 2</i>)

9.	62(1) Further issue of share capital	Based on consultation with SEBI, to amend Section 62(1)(a)(i) to insert “or such other lesser number of days as may be prescribed by the Central Government” after the words “not being less than 15 days”. <i>(Chapter 2 Para 10)</i>
10.	66(11) Publication of order of the NCLT confirming reduction of share capital	To omit Section 66(11). <i>(Chapter 1 Table 1 Point 3)</i>
11.	68(11) Default in complying with requirements for buy-back	To consider amending Section 68(11) to remove the punishment of imprisonment in relation to the offence mentioned therein. Thus, the offence under Section 68(11) shall be punishable with fine only. Consultation with SEBI may be undertaken in this regard. <i>(Chapter 1 Table 4 Point 7)</i>
12.	71(11) Non-compliance with order of the NCLT regarding failure to redeem debentures on maturity or in payment of interest	To omit Section 71(11). <i>(Chapter 1 Table 1 Point 4)</i>
13.	86(1) Contravention of the provisions of Chapter VI	To amend Section 86(1) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. <i>(Chapter 1 Para 2.14- 2.15)</i>

14.	88(5) Failure to maintain members' register, debenture-holders register and register of other security holders	To amend Section 88(5) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. (<i>Chapter 1 Para 2.7</i>)
15.	89 Declaration in respect of beneficial interest in any share	<ul style="list-style-type: none"> <li data-bbox="679 712 1453 846">(i) To amend Section 89(5) to substitute the offence mentioned therein with a suitable civil penalty. (<i>Chapter 1 Para 2.11</i>) <li data-bbox="679 880 1453 1059">(ii) To amend Section 89(7) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. (<i>Chapter 1 Para 2.16</i>) <li data-bbox="679 1093 1453 1317">(iii) To amend Section 89 to add a new sub-section (11) to allow the Central Government to prescribe class or classes of persons who shall not be required to make a declaration under Section 89(1), (2) or (3). (<i>Chapter 2 Para 9</i>)
16.	90 Declaration of interest by the significant beneficial owner	<ul style="list-style-type: none"> <li data-bbox="679 1395 1453 1529">(i) To amend Section 90(10) to substitute the offence mentioned therein with a suitable civil penalty. (<i>Chapter 1 Para 2.10</i>) <li data-bbox="679 1563 1453 1742">(ii) To amend Section 90(11) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. (<i>Chapter 1 Para 2.7</i>)
17.	92(6) Contravention of the requirements	To amend Section 92(6) to substitute the offence mentioned therein with a suitable civil penalty. (<i>Chapter 1 Para 2.18-2.19</i>)

	under this Section by a company secretary in practice certifying annual returns	
18.	105(5) Issuance of invitation to appoint proxies	To amend Section 105(5) to substitute the offence mentioned therein with a suitable civil penalty. (<i>Chapter 1 Para 2.20</i>)
19.	117(3)(g) Resolutions and agreements to be filed with the RoC by the company.	To consider amending the second proviso to Section 117(3)(g) to extend the exemption given thereunder to such classes of non-banking financial company, registered under Chapter IIIB of the RBI Act, 1934, as may be prescribed by the Central Government in consultation with the RBI. (<i>Chapter 2 Para 11</i>)
20.	124(7) Failure to comply with the requirements given in this Section for dealing with Unpaid Dividend etc.	To amend Section 124(7) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. (<i>Chapter 1 Para 2.20</i>)
21.	128(6) Failure to maintain books of accounts of the company at its registered office and its inspection thereof by any director of the company	To amend Section 128(6) to remove punishment of imprisonment in relation to the offence mentioned therein. Thus, the offence under Section 128(6) shall be punishable with fine only. (<i>Chapter 1 Table 4 Point 3</i>)

22.	134(8) Contravention of the requirements given in the Section for financial statements and Board reports	To amend Section 134(8) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. (<i>Chapter 1 Para 2.18, 2.19</i>)
23.	135 Company which meets the specified financial thresholds shall constitute a CSR Committee and comply with other provisions	(i) To amend Section 135(1) to add a second proviso enabling that the Central Government may, by rules, specify net worth, turnover, or net profit of higher value than the values mentioned in Section 135(1). (<i>Chapter 2 Para 13</i>) (ii) To amend Section 135(7) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. (<i>Chapter 1 Para 2.20</i>)
24.	143(15) Violation of the obligation to report fraud by auditor, company secretary in practice or cost accountant	To amend Section 143(15) to substitute the offence mentioned therein with a suitable civil penalty. (<i>Chapter 1 Para 2.18, 2.19</i>)
25.	147 Default in complying with provisions of Chapter X	(i) To amend Section 147(1) to remove the punishment of imprisonment in relation to the offence mentioned therein. Thus, the offence under Section 147(1) shall be punishable with fine only. (<i>Chapter 1 Table 4 Point 8</i>) (ii) To amend Section 147(2) to omit reference to Section 143(15). (<i>Chapter 1 Para 2.19</i>)

26.	167(2) Punishment for continuing to act as director even upon becoming liable for vacation of office under the Section	To amend Section 167(2) to remove the punishment of imprisonment in relation to the offence mentioned therein. Thus, the offence under Section 167(1) shall be punishable with fine only. <i>(Chapter 1 Table 4 Point 9)</i>
27.	172 Punishment for contravention of any provisions relating to appointment and qualifications of directors	To amend Section 172 to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. <i>(Chapter 1 Para 2.23)</i>
28.	178(8) Contravention of the provisions relating to Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee	To amend Section 178(8) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. <i>(Chapter 1 Para 2.20)</i>
29.	184(4) Contravention of the provisions mandating disclosure of interest by the director	To amend Section 184(4) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. <i>(Chapter 1 Para 2.12)</i>

30.	187(4) Contravention of the provisions regarding holding of investment by a company	To amend Section 187(4) to substitute the offence mentioned therein, in relation to both the company and officers in default, with a suitable civil penalty. (<i>Chapter 1 Para 2.20</i>)
31.	188(5) Punishment for contravention of provisions regarding related party transactions by a director or employee of company	To amend Section 188(5) to substitute the offence mentioned therein with a suitable civil penalty. (<i>Chapter 1 Para 2.20</i>)
32.	204(4) Contravention of provisions mandating secretarial audit for certain classes of companies	To amend Section 204(4) to substitute the offence mentioned therein, in relation to the company and officers in default and company secretaries in practice, with a suitable civil penalty. (<i>Chapter 1 Para 2.19</i>)
33.	232(8) Punishment for failure to comply with obligations imposed in relation to merger and amalgamation	To substitute Section 232(8) with a provision that provides that any company and its officers in default, which fails to comply with Section 232(5), shall be subject to a suitable civil penalty. (<i>Chapter 1 Para 2.3</i>)
34.	242(8)	To amend Section 242(8) to remove the punishment of imprisonment in relation to the offence mentioned therein.

	Powers of the NCLT to pass an order when an application has been made for relief in a case of oppression and mismanagement	Thus, the offence under Section 242(8) shall be punishable with fine only. <i>(Chapter 1 Table 4 Point 1)</i>
35.	243(2) Default in complying with directions of the NCLT regarding termination or modification of certain agreements	To amend Section 243(2), to remove the punishment of imprisonment in relation to the offence mentioned therein. Thus, the offence under Section 243(2) shall be punishable with fine only. <i>(Chapter 1 Table 4 Point 2)</i>
36.	247(3) Valuation by registered valuers	To amend Section 247(3) (excluding the proviso) to substitute the offence mentioned therein with a suitable civil penalty. <i>(Chapter 1 Para 2.21)</i>
37.	284 Promoters, directors, etc. to cooperate with the Company Liquidator	(i) To substitute the offence under Section 284(2) with a provision which provides that where any person required to assist or cooperate with the Company Liquidator does not assist or cooperate, the Company Liquidator may make an application to the NCLT for necessary directions; and (ii) To insert Section 284(3), which may provide that the NCLT, on receiving an application under subsection (2), shall by an order, direct such person to comply with the instructions of the Company Liquidator and to cooperate with her in collection of information and management of the company. <i>(Chapter 1 Table 3 Point 3)</i>

38.	302 Dissolution of company by the NCLT	<p>(i) To substitute Section 302(3) with a provision which provides that the NCLT shall forward a copy of the order to RoC, and direct the Company Liquidator to also forward such copy to the RoC, who shall record in the register relating to the company a minute of the dissolution of the company; and</p> <p>(ii) To omit Section 302(4).</p> <p><i>(Chapter 1 Table 3 Point 4)</i></p>
39.	342(6) Prosecution of delinquent officers and members of company	To omit Section 342(6). <i>(Chapter 1 Table 2 Point 1)</i>
40.	347(4) Contravention of directions of the Central Government in relation to disposal of books and papers of the company which has been wound up	To amend Section 347(4) to remove the punishment of imprisonment in relation to the offence mentioned therein. Thus, the offence under Section 347(4) shall be punishable with fine only. <i>(Chapter 1 Table 4 Point 11)</i>
41.	348(6) Contravention of provisions regarding information related to pending liquidations by	<p>(i) To omit Section 348(6).</p> <p>(ii) To make suitable changes to ensure that such non-compliances by company liquidators, who are insolvency professionals registered under the IBC, be dealt with under Chapter VI of Part IV of the IBC.</p> <p><i>(Chapter 1 Para 3.3)</i></p>

	Company Liquidator	
42.	348(7) Punishment for wilful default in contravention of provisions regarding auditing of statement by Company Liquidator	(i) To omit Section 348(7). (ii) To make suitable changes to ensure that such non-compliances by company liquidators, who are insolvency professionals registered under the IBC, be dealt with under Chapter VI of Part IV of the IBC. (Chapter 1 Para 3.3)
43.	356(2) Powers of the NCLT to declare dissolution of company void	To substitute Section 356(2) with a provision which provides that the NCLT shall forward a copy of the order to RoC, and also direct the Company Liquidator or the person on whose application the order was made to file a certified copy of the order to RoC, who shall register the same. (Chapter 1 Table 3 Point 5)
44.	New Chapter XXIA Producer Companies	To insert Part IXA of the 1956 Act (with minor modifications relating to cross-referencing or legacy changes) as Chapter XXIA of the 2013 Act. (Chapter 2 Para 4)
45.	392 Punishment for contravention of provisions related to foreign companies	To amend Section 392 to remove the punishment of imprisonment in relation to the offence mentioned therein. Thus, the offence under Section 392 shall be punishable with fine only. (Chapter 1 Table 4 Point 10)
46.	New 393A Exemption of Chapter applicable to	To insert a new provision, Section 393A which provides that nothing in Chapter XXII of the 2013 Act shall apply to such class or classes of foreign companies or bodies corporate as may be prescribed by the Central Government. (Chapter 2 Para 9)

	foreign companies or bodies corporate	
47.	403(1) Fee for submitting, filing, registering, or recording documents under the Act	To amend the third proviso to Section 403(1) to- (i) omit the words “more than twice the amount of additional fee already prescribed in the first or second proviso.”; and (ii) After the words “Provided also that”, the words “in relation to provisions as may be prescribed by the Central Government” be inserted. <i>(Chapter 2 Para 7)</i>
48.	405(4) Punishment for non-compliance with orders of the Central Government to direct companies to furnish certain information	To amend Section 405(4) to substitute the offence mentioned therein, in relation to both the companies and officers in default, with a suitable civil penalty. <i>(Chapter 1 Para 2.4, 2.5)</i>
49.	New 418A Benches of Appellate Tribunal	To insert Section 418A which allows the Central Government to constitute Benches of the Appellate Tribunal, by notification, as may be specified by the Central Government. <i>(Chapter 2 Para 5)</i>
50.	435(1) Carve-out in jurisdiction of Special Courts	To insert the words “other than Section 452(1),” after the words “under this Act,”. <i>(Chapter 2 Para 3)</i>
51.	441(5)	To substitute Section 441(5) with a provision which provides that if any officer or other employee of the company fails to comply with any order made by the

	Non-compliance with order of compounding of the NCLT or the RD	NCLT or the RD or any other officer authorised by the Central Government under sub-section (4), the maximum amount of fine, for the offence proposed to be so compounded, shall stand doubled. (<i>Chapter 1 Table 3 Point 2</i>)
52.	446B Lesser penalty for one person companies, small companies, producer companies and start-ups	To amend Section 446B with a provision which provides that notwithstanding anything contained in the 2013 Act, if a Start-Up, a Producer Company, a One Person Company or a small company fails to comply with any applicable provisions of the 2013 Act levying monetary penalties, such company and officer in default of such company shall be liable to a penalty which shall not be more than one half of the penalty specified in such respective provisions. (<i>Chapter 2 Para 8</i>)
53.	450 Contravention of any of the provisions of the 2013 Act or the rules made thereunder, and for which no penalty or punishment is provided elsewhere	To amend Section 450 to substitute the offence mentioned therein, in relation to both the companies and officers in default, with a suitable civil penalty. (<i>Chapter 1 Para 2.23</i>)
54.	454 Adjudication of penalties	To insert a provision similar to Section 73(8) of the CGST Act in relation to penalty for filing of annual return/ financial statement. (<i>Chapter 2 Para 16</i>)
55.	465(1) Repeal of certain enactments and savings	To amend the first proviso to Section 465(1) suitably. (<i>Chapter 2 Para 4</i>)

56.	Appeal against orders of the RD	To examine and consider inserting suitable provisions for appeal against orders of the RD in the next phase. (Chapter 2 Para 1)
57.	Notifying specialised benches of NCLT	Based on experience in implementation, the Government may consider forming specialised benches of NCLT. (Chapter 2 Para 5.3)
58.	Payment of remuneration to non-executive directors in case of inadequacy of profits or in case of losses	To amend relevant provisions, including Section 149 and 197, to provide remuneration for non-executive directors. (Chapter 2 Para 6)
59.	Disclosures governing QIPs by listed companies	Based on consultation with SEBI, to consider amending relevant provisions of the 2013 Act and PAS Rules, in the next phase, to harmonise various requirements and disclosures for QIPs. (Chapter 2 Para 12)
60.	Disqualification of directors	To examine the issues involved in greater detail, and undertake appropriate amendments in the next phase. (Chapter 2 Para 14)
61.	Modification of provisions in respect of debarment of audit firms	To examine the issues involved in greater detail, and undertake appropriate amendments in the next phase. (Chapter 2 Para 15)
62.	Rationalisation of quantum of penalties in respect of six Sections presently under the IAM framework	To amend Sections 64(2), 92(5), 117(2), 137(3), 140(3) and 165(6). (Chapter 1 Para 1.13 and 2.1 and Annexure IV)

LIST OF DEFINED TERMS

Adjudicating Officers	AOs
Central Goods and Services Tax Act, 2017	CGST Act
Code of Criminal Procedure, 1973	CrPC
Committee to Review Offences under the Companies Act, 2013	Offences Committee
Companies Act,1956	1956 Act
Companies Act, 2013	2013 Act
Companies (Amendment) Act, 2017	CAA 2017
Companies (Amendment) Act, 2019	CAA 2019
Companies Law Committee (2016)	CLC (2016)
Company Law Committee (Present)	Committee
Companies (Prospectus and Allotment of Securities) Rules, 2014	PAS Rules
Corporate Social Responsibility	CSR
Farmer Producer Organisations	FPOs
Global depository receipts	GDR
High Level Committee on Corporate Social Responsibility 2018	HLC
In-house Adjudication Mechanism	IAM
Institute of Chartered Accountants of India	ICAI
Insolvency and Bankruptcy Code, 2016	IBC
International Financial Services Centre Gujarat International Finance Tec-City	IFSC GIFT City
International Financial Services Centre	IFSC
Investor Education and Protection Fund Authority	IEPFA
Ministry of Corporate Affairs	MCA

National Company Law Tribunal	NCLT
National Company Law Appellate Tribunal	NCLAT
National Financial Reporting Authority	NFRA
Non-Banking Financial Companies	NBFCs
Qualified Institutional Placements	QIPs
Registrar of Companies	RoC
Regional Director	RD
Reserve Bank of India	RBI
SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018	SEBI ICDR Regulations
SEBI (Issue and Listing of Debt Securities) Regulations, 2008	Debt Listing Regulations
SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013	NCRPS Regulations
Securities and Exchange Board of India	SEBI
Securities (Contract) Regulation Act, 1956	SCRA