

***THE INSTITUTE COMPANY SECRETARIES OF INDIA  
WESTERN INDIA REGIONAL COUNCIL***

***ANALYSIS & IMPACT OF AMENDMENTS BY  
COMPANIES AMENDMENT ACT,2019 & PROHIBITION  
OF INSIDER TRADING***

***BY***

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# BACKGROUND

- ▶ Committee formed on July 13, 2018 Chaired by Mr. Injeti Srinivas, Secretary, Ministry of Corporate Affairs having 10 eminent members in the Committee to review provisions on offences and make suggestions
- ▶ Report dated August 14, 2018
- ▶ Committee recommended existing rigour of the law should continue for serious offences and lapses that are essentially technical or procedural in nature may be shifted to in-house adjudication process
- ▶ Companies (Amendment) Ordinance, 2018 was promulgated on 2nd day of November, 2018
- ▶ Companies (Amendment) Bill, 2018 was introduced in the Lok Sabha - passed in the said House on the 4th day of January, 2019
- ▶ Not taken up in Rajya Sabha
- ▶ The President promulgated the Companies (Amendment) Ordinance, 2019 and the Companies (Amendment) Second Ordinance, 2019 on the 12th day of January, 2019 and the 21st day of February, 2019
- ▶ The Companies (Amendment) Bill, 2019 was passed by the Rajya Sabha on the 30th day of July, 2019 and by Lok Sabha on the 27th day of July, 2019
- ▶ Companies (Amendment) Act, 2019 received the assent of the President on the 31st July, 2019

# RECOMMENDATIONS

- ▶ Re-categorising 16 offences out of 81 which are in the category of compoundable to an in-house adjudication framework by shifting “fine” to “penalty”
- ▶ Instituting transparent and technology driven in-house mechanism by minimizing physical interface
- ▶ Declogging NCLT
  - Enlarging the jurisdiction of RD by enhancing pecuniary limits for compounding u/s441
  - Vesting with the CG the power to approve the alteration in the F .Y .
  - Vesting with the CG the power to approve cases of conversion of public cos. to private cos.
  - Enhancing corporate compliances and corporate governance
  - Re-insertion of provision of commencement of business
  - Protection of public deposits
  - Greater accountability w.r.t filing documents related to creation, modification and satisfaction of charges
  - Non-maintenance of registered office to trigger de-registration process etc.



# BACKGROUND

## Finance Minister's statement

**“The Bill seeks to ensure more accountability and better enforcement to strengthen the corporate governance norms and compliance management in corporate sector as enshrined in the Companies Act, 2013”.**



# TOTAL AMENDMENTS

- ▶ Amendments introduced in 42 sections
- ▶ 31 sections from Ordinance - effective Date 2nd November,2018
- ▶ Remaining 11 sections – 15<sup>th</sup> August,2019

# Fine and Penalty



- ▶ Fine requires prosecution adjudicated by a Court of competent jurisdiction or other authority
- ▶ No offence – only civil liability
- ▶ Penalty departmental action
- ▶ Fine – criminal law & Penalty civil and criminal law
- ▶ No need for compounding
- ▶ Department can issue SCN and levy penalty
- ▶ More revenue generation by Penalty & Companies have to pay additional cost

## SECTION 2 - DEFINITION: 2(41)- FINANCIAL YEAR

- ▶ Option to a company or body corporate which is a holding company or a subsidiary or **associate company** of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the **\*Central Government** may, on an application made by that company or body corporate, allow any period as its financial year, whether or not that period is a year
- ▶ Pending applications currently to be handled by Tribunal

**\*Tribunal**



# NEW SECTION 10A - COMMENCEMENT OF BUSINESS

- ▶ Company incorporated after the Commencement of this Act shall not commence any business or exercise any borrowing powers unless a declaration is filed by a Director within 180 days after the date of incorporation in respect to the receipt of paid up value of the shares agreed by the subscribers to the memorandum and the verification of Registered office with the Registrar of Companies
- ▶ Penalty for non compliance
  - Company -Rs. 50000
  - Officer-in-default -Rs. 1000 for each day to max. Rs. 1 lac
  - Filing of e form INC 20A & if in SPICE form Registered office is not given then INC- 22 to be filed





# SECTION 12 (9) - REGISTERED OFFICE OF THE COMPANY



- ▶ New insertion regarding the physical verification of the Registered office of a Company by the Registrar and power to remove the name of the Company from the register of companies if any default is found in complying with the requirements prescribed under 12(9)
- ▶ Shell companies to be targeted
- ▶ INC 22A does the same

# SECTION 14 - ALTERATION OF ARTICLES

- ▶ The power of the tribunal in relation to approve any alteration in the Articles of the Company having effect of conversion of a public company into a private company has been moved to **\*Central Government**
- ▶ Pending applications currently to be handled by Tribunal

**\* Tribunal**



## SECTION 26 - MATTERS TO BE STATED IN PROSPECTUS

- ▶ Requirement for the registration of prospectus has been done away
- ▶ clause 4, 5 and 6 the word registration has been substituted with the word **filing**

## SECTION 29 - PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALIZED FORM

- ▶ New sub section (1A) added whereby in case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialized form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder
- ▶ Word Public Limited is omitted – not restricted to Public Companies

# SECTION 35 - CIVIL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS

- ▶ Provision of this section has been amended in line with the amendment in the section 26 of the CA, 2013
- ▶ Duty of the Company is being restricted to the **filing** of prospectus only instead of registration.



# SECTION 53 -PROHIBITION ON ISSUE OF SHARES AT DISCOUNT

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
<p>Company - Minimum <b>Fine</b> of Rs. 1 Lakh &amp; Maximum <b>Fine</b> of Rs. 5 Lakh</p> <p>Officer - in Default Minimum <b>Fine</b> of Rs. 1 Lakh &amp; Maximum <b>Fine</b> of Rs. 5 Lakh</p>	<p>Company &amp; Officer in Default Amount raised or Rs. 5 Lakh <b>Penalty</b></p> <p><b>Company shall also be required to refund the money raised through such issue at a rate of interest of 12% p.a. from the date of issue of shares</b></p>



Greater Public accountability

# SECTION 64 - NOTICE TO BE GIVEN TO REGISTRAR FOR ALTERATION OF SHARE CAPITAL

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Company & Officer in default Minimum Fine of Rs. 1000 per day & Maximum Fine of Rs. 5 Lakh	Company & Officer in default Minimum <b>Penalty</b> of Rs. 1000 per day & Maximum <b>Penalty</b> of Rs. 5 Lakh

Default in filing of e-Form SH-7 with the RoC, the company and every officer-in-default shall be liable to a penalty



# SECTION 77 - DUTY TO REGISTER CHARGES

## Erstwhile provision

- ▶ Register charge within 30 days of creation
- ▶ Further, 270 days on application + additional fees
- ▶ Beyond 300 days, seek extension

## New provision

- ▶ Register charge within 30 days of creation
- ▶ Further, 30 days on application + additional fees
- ▶ Beyond 60 days, seek extension within 60 days on application + advalorem fees -6 times & 6times normal fees+.05% of secured charge- max 5 lacs

Welcome change for would ensure updated records of secured borrowings to be available in public domain





# SECTION 77 - DUTY TO REGISTER

## CHARGES

- ▶ (a) in case of charges created before the commencement of the Companies (Amendment) Act, 2019, within a period of three hundred days of such creation; or (
- ▶ b) in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:
- ▶ Provided further that if the registration is not made within the period specified— (a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
- ▶ (b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such ad valorem fees as may be prescribed.”
- ▶ After ordinance i.e. 02.11.2018 clause relating to Condonation of delay in creation/ modification of charge has been removed from Section 87

## SECTION 86 - PUNISHMENT FOR CONTRAVENTION

- ▶ Apart from the existing penal provisions on any contravention of the provisions of the chapter, any willful furnishing of false or incorrect information or knowingly suppressing any material information pertaining to registration of charges shall tantamount to be a fraud and shall attract action under Section 447



## SECTION 87 - RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES

- ▶ Omission or misstatement of particulars w.r.t. any such charge or modification of charge or w.r.t any memorandum of satisfaction or other entry made u/s82 or 83, was accidental or inadvertently made, it may on an application made, direct for extending the time for intimating about the satisfaction of charge and rectification of the misstatement or omission made.
- ▶ ...on any other grounds, it is just and equitable to grant relief removed
- ▶ Discretionary power which could be used arbitrarily, has been eliminated



# SECTION 90 - REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY

- ▶ New subsection 4A introduced whereby Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section
- ▶ The introduction of section brings more clarity casting duty on company to identify and report SBO to the Registrar
- ▶ if a Company fails to take necessary steps, then 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 first during which the failure continues.
- ▶ Sub section 9 – One year period provided for applying to Tribunal against the order by Company or any aggrieved party for relaxing the restriction
- ▶ Else transferred to the authority constituted u/s 125(5) – Investor Education and Protection fund authority
- ▶ Further, Central Government is empowered to make rules for the section.



# SECTION 92 - ANNUAL RETURN

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
<p>Company :Minimum Fine of Rs. 50,000 &amp; Maximum Fine of Rs. 5 Lakh</p> <p>Officer in default : Imprisonment of 6 months Or Minimum Fine of Rs. 50,000 &amp; Maximum Fine of Rs. 5 lakh</p>	<p>Company &amp; Officer in default: Minimum Penalty of Rs. 50,000</p> <p>Further Penalty of Rs. 100 per day</p> <p>Maximum Penalty of Rs. 5 Lakh</p>

Annual Return

# SECTION 102 - STATEMENT TO BE ANNEXED TO NOTICE

<b>Penal provisions as per the erstwhile Section</b>	<b>Penal provisions as per the amended Section</b>
<p>Every promoter, director, manager or other KMP who is in default shall be punishable with fine which may extend to Rs. 50,000 or 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more</p>	<p>Every promoter, director, manager or other KMP who is in default shall be punishable with Penalty which may extend to Rs. 50,000 or 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more</p>



# SECTION 105 - PROXIES

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Company and Officer in Default Fine of Rs. 5000	Company and Officer in Default penalty of Rs. 5000





# SECTION 117 - RESOLUTIONS AND AGREEMENTS TO BE FILED

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Company Minimum Fine of Rs. 1 Lakh Maximum Fine of Rs. 25 Lakh Officer in default Minimum Fine of Rs. 50,000 Maximum Fine of Rs. 5 Lakh	Minimum Penalty of Rs. 1 Lakh Further Penalty of Rs. 500 everyday Maximum Penalty of Rs. 25 Lakh Officer in default Minimum Penalty of Rs. 50,000 Further Penalty of Rs. 500 per day Maximum Penalty of Rs. 5 Lakh



# SECTION 121- REPORT ON ANNUAL GENERAL MEETING

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Company Minimum Fine of Rs. 1 Lakh Maximum Fine of Rs. 5 Lakh  Officer in default Minimum Fine of Rs. 25000 Maximum Fine of Rs. 1 Lakh	Company Minimum Penalty of Rs. 1 Lakh Further Penalty of Rs. 500 per day Maximum Penalty of Rs. 5 Lakh  Officer in default Minimum Penalty of Rs. 25000 Further Penalty of Rs. 500 per day Maximum Penalty of Rs. 1 Lakh



# SECTION 132 - CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY

- ▶ 3 New sub sections are introduced as follows:
- ▶ To empower NFRA to perform functions through divisions as may be prescribed
- ▶ The division of NFRA shall be presided by Chairperson or a full-time member authorized by Chairperson
- ▶ An executive body shall be formed consisting of Chairperson and full time members of NFRA for discharge of its functions
- ▶ Debar a member or firm from appointing to do audit functions or Valuation u/s 47 for a period of 6 months to 10 years (max)



# SECTION 135 - CORPORATE SOCIAL RESPONSIBILITY

- ▶ Clarity for calculation of profits for newly incorporated Company provided by addition of following words under sub section 5 “or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years
- ▶ On the unspent amount, a provision to transfer the unspent amount to a fund specified under schedule VII within six months from the expiry of financial year has been provided unless it relates to an ongoing project
- ▶ In relation to any amount being unspent which relates to an ongoing project shall be transferred to a separate account to be opened by the Company to be called as the Unspent Corporate Social Responsibility Account within a period of 30 days from the end of Financial Year and such amount shall be spent within the period of three financial years from the date of transfer and in case of failure such amount shall be transferred to a fund specified in Schedule VII within 30 days from the date of completion of third FY
- ▶ In case of default, 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 which may extend to five lakh rupees, **or with both**
- ▶ ( 500 crores,1000 crores,5 crores, preceding year, 2% Average profits , PBT, sect 198)



# SECTION 137 - COPY OF FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Company Fine of Rs. 1000 everyday Maximum Fine of Rs. 10 Lakh Officer in default Imprisonment of term of 6 months Minimum Fine -Rs. 1 Lakh Maximum Fine -Rs. 5 Lakh	Company Penalty of Rs. 1000 everyday Maximum Penalty of Rs. 10 Lakh Officer in default Minimum Penalty- Rs. 1 Lakh Further Penalty- Rs 100 per day Maximum Penalty- Rs. 5 Lakh



# SECTION 140 (3) - REMOVAL, RESIGNATION OF AUDITOR AND GIVING OF SPECIAL NOTICE

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Auditor: Minimum Fine of Rs. 50,000 or amount equal to remuneration of auditor, whichever is less Maximum Fine of Rs. 5 Lakh	Auditor: Minimum Penalty of Rs. 50,000 or amount equal to remuneration Further penalty of Rs. 500 every day Maximum Penalty of Rs. 5 Lakh
ADT - 3 filing in case of resignation	

# SECTION 157(2) - COMPANY TO INFORM DIRECTOR IDENTIFICATION NUMBER TO REGISTRAR

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Company Minimum Fine of Rs. 25,000 Maximum Fine of Rs. 1 Lakh Officer in default Minimum Fine of Rs. 25,000 Maximum Fine of Rs. 1 Lakh	Company Minimum Penalty of Rs. 25,000 Maximum Penalty of Rs. 1 Lakh Further Penalty of Rs. 100 per day Officer in default Minimum Penalty of Rs. 25,000 Maximum Penalty of Rs. 1 Lakh

Practical situation currently??



# SECTION 159 - PENALTY FOR DEFAULT OF CERTAIN PROVISIONS

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Individual or Director: Imprisonment of 6 months Or Minimum Fine of Rs. 50,000 Further Fine of Rs. 500 per day	Individual or Director: Imprisonment of 6 months Or Minimum Fine Penalty of Rs. 50,000 Further Fine Penalty of Rs. 500 per day

Default in 152 – Appointment of Directors, 155 – more than one DIN, 156-  
DIN intimation Prosecution eliminated



# SECTION 164 (1)(H) - DISQUALIFICATION OF DIRECTOR

- ▶ New clause has been inserted under the Section linking Section 165 – Max. no. Directorship -20
- ▶ shall be a ground for disqualification of a director, if he/ she breaches the limits of maximum directorship allowed thereunder
- ▶ Section 164 leads to automatic vacation of office from all the existing companies





# SECTION 165 - NUMBER OF DIRECTORSHIPS

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Director: Minimum Fine of Rs. 5000 Maximum Fine of Rs. 25,000	Director: Penalty of Rs. 5000 per day

SECTION 191- PAYMENT TO DIRECTOR FOR  
LOSS OF OFFICE IN CONNECTION WITH  
TRANSFER OF UNDERTAKING, PROPERTY  
OR SHARE

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Director: Minimum Fine of Rs. 25,000 Maximum Fine of Rs. 1 Lakh	Director: Penalty of Rs. 1 Lakh

# SECTION 197 - MANAGERIAL REMUNERATION

- ▶ Sub- section (7) of the Section has been removed prohibiting entitlement of stock option by independent directors
- ▶ Section 149 (9) provides prohibition and hence irrelevant
- ▶ penal provision of payment of fine has been replaced with penalty  
Minimum Penalty of Rs. 1 Lakh & Maximum Penalty of Rs. 5 Lakh

# SECTION 203 - APPOINTMENT OF KEY MANAGERIAL PERSONNEL

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Company Minimum Fine of Rs. 1 Lakh Maximum Fine of Rs. 5 Lakh Director/KMP/Officer in default Minimum Fine of Rs. 50,000 Further Fine of Rs. 1000 everyday	Penalty of Rs. 5 Lakh Director/KMP/Officer in default Minimum Penalty of Rs. 50,000 Further Penalty of Rs. 1000 everyday Maximum Penalty of Rs. 5 Lakh

**Appointment of key managerial personnel**

Appointment of MD/CEO/Manager ,CS & CFO & not holding In more than 1 Company

# SECTION 212 - INVESTIGATION INTO AFFAIRS OF COMPANY BY SERIOUS FRAUD INVESTIGATION OFFICE

## Amendment

- ▶ Any officer of SFIO not below the rank of Assistant Director has a power to arrest under circumstances as specified under the Act
- ▶ Cases to be taken to \* **Special Court** or Judicial Magistrate or Metropolitan Magistrate
- ▶ New subsection 14A is introduced as follows:
- ▶ “Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.”



सत्यमेव जयते

# SFIO

Serious Fraud Investigation Office

# SECTION 238 - REGISTRATION OF OFFER OF SCHEMES INVOLVING TRANSFER OF SHARES

Penal provisions as per the erstwhile Section	Penal provisions as per the amended Section
Director: Minimum Fine of Rs. 25,000 Maximum Fine of Rs. 5 Lakh	Director: Penalty of Rs. 1 Lakh



# SECTION 241 (2) & (3)- APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF OPPRESSION

- ▶ New proviso
- ▶ For class of companies as may be prescribed the matter shall only be made before principal bench of the Tribunal
- ▶ Three new sub-sections - in the opinion of Central government there exists circumstances
- ▶ Fraud , negligence
- ▶ Business principles and prudent commercial practices not followed
- ▶ Cause damage to industry, trade ,business
- ▶ Defraud creditors, members or others



## SECTION 241 (2) & (3)- APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF OPPRESSION

- ▶ The Central Government may initiate a case against such person
- ▶ refer the same to the Tribunal
- ▶ with a request that the Tribunal may inquire into the case
- ▶ record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company
- ▶ Application send to be reasoned and signed and verified



# SECTION 242 - POWERS OF TRIBUNAL

- ▶ An order for an application of oppression and mis-management is to be filed with Registrar within 30 days of issue of the order by Tribunal
- ▶ A new sub section is introduced to cast responsibility on tribunal to record its decision at the conclusion of hearing, specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company

## SECTION 243- CONSEQUENCE OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS

- ▶ In case a person is declared as not a fit or proper person pursuant to sub-section 4A of section 242 under the case of oppression and mismanagement shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision
- ▶ Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years
- ▶ Further, any person on being removed as Director or any other office connected with the conduct and management of affairs of the company, shall not be entitled for loss of compensation or termination of office under any contract

# SECTION 248 - POWER OF THE REGISTRAR TO REMOVE THE NAME OF THE COMPANY

- ▶ Section 10A - Subscribers money not received and verified within 180 days
- ▶ 12(9) – Business not carried out from Registered office

# SECTION 272 - PETITION FOR WINDING UP

- ▶ The amendments enables the Registrar to present a petition for winding up under section 271 with only the exception of situation where if the company has, by special resolution, resolved that the company be wound up by the Tribunal the Registrar may not present such petition



## SECTION 398 - PROVISIONS RELATING TO FILING OF APPLICATIONS, DOCUMENTS, INSPECTION, ETC., IN ELECTRONIC FORM

- ▶ Consequent to the amendment of filing prospectus u/s 26 of the Act, the provisions with regards to registration of prospectus is deleted.

# SECTION 441 - COMPOUNDING OF OFFENCES

- ▶ Increased limit of offence compounding before the Regional Director from 5 Lakhs to 25 Lakhs
- ▶ any offence not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine shall not be compoundable



# SECTION 446B – PENALTY FOR OPC AND SMALL COMPANY

- ▶ Language change substituting fine with penalty for OPC and small companies with  $\frac{1}{2}$  of normal penalty

92- Annual Return, 117 (2) & (3) – Filing of Resolutions & Agreements, 137 –  
Filing of financial Statements

# SECTION 447 - PUNISHMENT FOR FRAUD

- ▶ The quantum of fine has been increased from Twenty Lakh rupees to fifty lakh rupees
- ▶ Fraud involves an amount less than Rs.10 lakh or 1% of the turnover of the company, whichever is lower, and does not involve public interest, the defaulter shall be punishable with imprisonment for a term which may extend to 5 years, or with maximum fine upto Rs.50 lakhs or both
- ▶ Fraud involves an amount atleast Rs.10 lakh or 1% of the turnover of the company, whichever is lower, and does not involve public interest, the defaulter shall be punishable with imprisonment for a term which is not less than 6 months and may extend to 10 years and fine to 1 – 3 times of the fraud amount
- ▶ If fraud involves public interest 3 years imprisonment



# SECTION 454 - ADJUDICATION OF PENALTIES

- ▶ Existing section empowered the adjudicating officer to impose penalty, by an order, on the company and the officer who is in default in case of any non-compliance or default of the provisions of the Act
- ▶ Such order may henceforth be included **any other person** too, hence the same expands the power of the adjudicating officer
- ▶ the order of the adjudicating officer may also provide for rectification of the default by the concerned person
- ▶ Penal provisions as provided in sub-section (8) shall apply to violation in compliance of the said order also

# NEW SECTION 454A - PENALTY FOR REPEATED DEFAULT

- ▶ The newly inserted section provides for penalty of twice the amount of penalty in case of repeated defaults by companies or any person who had already been subjected to penalty under the Act
- ▶ subsequent default has to be repeated within 3 years from the date of order imposing penalty for earlier default



## SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015



# WHAT IS INSIDER TRADING ?

- ▶ Dealing in securities by an Insider, who has the knowledge of material “inside” information which is not known to the general public
- ▶ Trading/ dealing in company’s stock by an insider/ connected person on the basis of Unpublished Price Sensitive Information (UPSI)
- ▶ Used to make profit at the expense of other investors
- ▶ Leads to loss of confidence of investor in stock market
- ▶ Process corrupts the ‘Level Playing Field’
- ▶ Easier to identify the beneficiaries of insider dealing
- ▶ Extent of losses occurred is impossible to calculate
- ▶ Strikes at the very root of market integrity
- ▶ Considered as Illegal



# WHO IS INSIDER

“Insider” means any person who is:

- ▶ a connected person; or
- ▶ in possession of or having access to unpublished price sensitive information (UPSI);



# CONNECTED PERSONS

- ▶ Any person who is or has during the 6 months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or e-employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access



# DEEMED TO BE CONNECTED PERSONS

- ▶ a) an immediate relative of connected persons or
- b) a holding company or associate company or subsidiary company or
- c) an intermediary or an employee or director there of or
- d) an investment company, trustee company, asset management company or an employee or director there of; or
- e) an official of a stock exchange or of clearing house or corporation; or
- f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund orris an employee thereof; or
- g) a member of the board of directors or an employee, of a public financial institution
- h) an official or an employee of a self – regulatory organization recognized authorized by the Board;
- i) a banker of the company; or
- (j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent . of the holding or interest;



# UNPUBLISHED PRICE SENSITIVE INFORMATION

- ▶ UPSI means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities
- ▶ Information, including but not restricted to following shall be held as UPSI
  - financial results;
  - dividends;
  - change in capital structure; mergers, de-mergers, acquisitions, delisting's, disposals and expansion of business and such other transactions;
  - mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions
  - changes in key managerial personnel; and
  - ~~material events in accordance with the listing agreement~~

Price Sensitive  
Information





# COMMUNICATION / PROCUREMENT OF UPSI

- ▶ No Insider shall communicate, provide, or allow access to
- ▶ No person shall procure from or cause the communication by Insider of any

UPSI relating to a company or its securities listed or **proposed to be listed** to any other person except where such communication is in furtherance to legitimate purpose or performance of duty or discharge of legal obligation

Except for performance of duties, for legitimate business purposes & on a need to know basis. – Collaborator, JV partner, Due Diligence consultants etc..

UPSI may be communicated in connection with an open offer under the takeover regulations, where the BOD is of the view that the proposed transaction is in the best interest of the company;

If the proposed transaction does not entail an open offer, then the BODs shall disseminate the UPSI atleast 2 trading days prior to the proposed transaction



# RESTRICTION ON TRADING WHILE IN POSSESSION OF PRICE SENSITIVE INFORMATION

- ▶ No Insider shall trade in the securities that are listed or proposed to be listed on the stock exchange when in possession of UPSI except in following permitted situations:
  1. Off market inter-se transfers between promoters
  2. In case of non-individual insider, the person in possession of UPSI and person taking trading decisions are different
  3. The trade pursuant to a trading plan
  4. **Transfer through Block deal mechanism between insiders who were in possession of the same UPSI**
  5. **Trading pursuant to fulfillment of a statutory or regulatory obligations**
  6. **Exercise of stock options (where exercise price was pre-determined in compliance with SEBI (SBEB)Regulations,2014**

# RESTRICTION ON TRADING WHILE IN POSSESSION OF PRICE SENSITIVE INFORMATION

- ▶ The burden of proving innocence shifted on trading while in possession of price sensitive information to connected person
- ▶ For other persons, it continuous to lie with SEBI.
- ▶ Trading, while in possession of UPSI is presumed to be violative of the regulations
- ▶ Reason of trade / application of proceeds irrelevant

# TRADING PLAN

- ▶ An advance planning for trading in the securities of the company by the Insider (who are perpetually in possession of the UPSI) . The plan need to satisfy the following conditions:
- ▶ Six months cooling off period
- ▶ No trading between end of the quarter of Financial Period and closure of second trading day after result announcement
- ▶ Gap between Audit committee meetings and Board Meetings to be minimum
- ▶ Plan for minimum 12 months
- ▶ No overlapping of trading plan
- ▶ Set out either the value of trades or the number of securities to be traded along with the nature and the intervals at, or dates of trade



# TRADING PLAN

- ▶ No requirement for mandatory six months gap between contra trade
- ▶ No format prescribed. Trading Plan can provide for trading on reaching the floor price, transaction on particular date, pricing formula etc.
- ▶ Trading plan once approved shall be irrevocable
- ▶ Trading plan to be suspended if UPSI continues till implementation
- ▶ No market abuse through trading plan
- ▶ Trading plan to be approved by Compliance Officer
- ▶ Trading plan will be disseminated on stock exchanges website

# LEGITIMATE PURPOSES

- ▶ Regulation 3(1) and 3(2) provided that no Insider shall communicate UPSI for other the “Legitimate Purposes” . Now additional provisions have been made in this respect
- ▶ Regulation 3(2A)- “The board of directors of a listed company shall make a policy for determination of “legitimate purposes” as a part of “Codes of Fair Disclosure and Conduct” formulated under regulation 8.”
- ▶ Regulation 3(2B)- “Any person in receipt of unpublished price sensitive information pursuant to a “legitimate purpose” shall be considered an “insider” for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.”

# WHO WILL MONITOR

- ▶ The Regulations have casted major responsibility for monitoring & implementing the codes specified in these Regulations upon the Compliance Officer;
- ▶ Compliance Officer means any senior officer, designated so and reporting to the BOD, who is **financially literate** and well-versed with legal & regulatory compliances understands financial statements;
- ▶ He/ She shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company;



# DISCLOSURES

Type of Disclosure	Subject	By	to	Time Limit
Initial Disclosure	Holding in the Company	Promoter, KMP or Director of a listed company	Company	With 30 days of these Regulation taking effect
	Holding on the date of appointment	Promoter, KMP or Director	Company	Within 7 days of such appointment
Continuous Disclosure	Value of securities traded, in aggregate, in a calendar quarter, exceeds traded value of Rs. 10 Lac or any other value as	Promoter or Director or Employee	Company	Within 2 days of such transaction
		Company	Stock Exchange	Within 2 days of receipt of disclosure
Disclosure by other Connected Persons	As required by the company	Connected Person	Company	As specified by the Company



# OTHER ASPECTS

- ▶ Maintenance of Digital Database along with PAN or other identification
- ▶ Formulation of Separate Code of Conduct by listed Companies and Intermediaries & Fiduciaries
- ▶ BOD approval mandatory to the Code of Conduct; Intermediaries to have Code of Conduct as per Schedule C now.
- ▶ Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of these regulations
- ▶ Designated persons defined – Employees of listed companies, intermediary, fiduciary, employees of subsidiaries, Promoters of listed company , CEO and 2 levels down, all supports staff of listed company, intermediary , fiduciary such as IT & Secretarial staff
- ▶ Having Institutional Mechanism for Prevention of Insider Information
- ▶ Audit committee to review the effectiveness of the Mechanism in place every year



# OTHER ASPECTS

- ▶ Have Policies formed for Insider trading and procedure for inquiry in case of leak of information
- ▶ Whistleblower policy
- ▶ Co-operation by Fiduciaries for investigation
- ▶ Disclosures made shall be maintained for a Minimum period of 5 years
- ▶ Trading of Securities shall also include trading of derivatives
- ▶ Any contravention of these Regulations shall be dealt with by SEBI in accordance with the SEBI Act, 1992
- ▶ **MONETARY PENALTY:** Section 15G of the Act imposes penalty of atleast Rs10 Lacs, which may extend to Rs. 25 Crore or three times of profits made out of insider trading, whichever is higher
- ▶ **IMPRISONMENT:** Section 24 of SEBI Act even goes to the extent of imprisonment upto 10 years or fine upto Rs. 25 Crore, or both, for any offences pertaining to contravention of the provisions of the Act



# NEW INFORMANT POLICY

- ▶ Introduced on September 17, 2019 & applicable from December 26, 2019
- ▶ ‘Informant’ means an individual(s), who voluntarily submits to the Board a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur, in a manner provided under these regulations, regardless of whether such individual(s) satisfies the requirements, procedures and conditions to qualify for a reward
- ▶ ‘Informant Incentive Committee’ means the High Powered Advisory Committee constituted by the Board in the manner as may be specified under regulation 11 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018.



# NEW INFORMANT POLICY

- ▶ ‘irrelevant, vexatious and frivolous information’ includes, reporting of information which in the opinion of the Board, - (i) Does not constitute a violation of insider trading laws; or (ii) Is rendered solely for the purposes of malicious prosecution; or (iii) Is rendered intentionally in an effort to waste the time and resource of the Board.
- ▶ ‘Original Information’ means any relevant information submitted in accordance with these regulations pertaining to any violation of insider trading laws that is:- (i) derived from the independent knowledge and analysis of the Informant; (ii) not known to the Board from any other source, except where the Informant is the original source of the information; (iii) is sufficiently specific, credible and timely to - (1) commence an examination or inquiry or audit, (2) assist in an ongoing examination or investigation or inquiry or audit, (3) open or reopen an investigation or inquiry, or (4) inquire into a different conduct as part of an ongoing examination or investigation or inquiry or audit directed by the Board; (iv) not exclusively derived from an allegation made in a judicial or administrative hearing, in a Governmental report, hearing, audit, or investigation, or from the news media, except where the Informant is the original source of the information; and (v) not irrelevant or frivolous or vexatious. Explanation. – Information which does not in the opinion of the Board add to the information already possessed by the Board is not original information
- ▶ Own analysis & Own Knowledge

# NEW INFORMANT POLICY

- ▶ Submission of original Information to the Board
- ▶ Voluntary Information Disclosure Form to the Office of Informant Protection of the Board in the format and manner set out in Schedule D
- ▶ The Voluntary Information Disclosure Form may be submitted through informant's legal representative
- ▶ If not appear before Board and establish identity
- ▶ Receipt of Original Information by the Board - Independent Office of Informant Protection
- ▶ Board to verify info- no acknowledgment to Informant
- ▶ On recovery of monetary sanctions Board may ask Informant to apply for reward - irrespective informing to his/her organization
- ▶ More than one member distributed equally from Investors protection fund
- ▶ Board to determine the reward – If twice the reward collected
- ▶ 10% of monetary sanctions collected subject to a max of Rs. 1 crore or as may be prescribed by the Board as Reward



# NEW INFORMANT POLICY

- ▶ Rejection of rewards in some cases like not original Information or information acquired through investigative agencies etc.. Or to be provided by dutybound persons, wilful non co-operative persons, against whom criminal proceedings are to be initiated
- ▶ Informant confidentiality – not to be disclosed
- ▶ Original Information to be disclosed at the discretion of Board in courts
- ▶ Protection against retaliation and victimization - Code of conduct
- ▶ Victimized employee to approach Court or Tribunal – Employer be liable for penalty , debarred
- ▶ Void agreements – Other than advocate, stop employee from communicating to Board
- ▶ No amnesty or immunity for violation, to consider the co-operation given by Informant, to get reward after paying monetary amounts
- ▶ Public dissemination and incentivization of Informant – Publish information , statistics, reward given etc..





**KNOWLEDGE  
HAS A  
BEGINNING  
BUT NO END**

Thank You!  
😊