



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT PROFESSIONAL PROGRAMME (NEW SYLLABUS)

***for
June, 2021 Examination***

**SECRETARIAL AUDIT, COMPLIANCE
MANAGEMENT AND DUE DILIGENCE**

MODULE 2

PAPER 4

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Lesson 2 – Compliances

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

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

In the Companies (Management and Administration) Rules, 2014, in rule 12, in sub-rule (1), the following proviso shall be inserted, namely:-

"Provided that a company shall not be required to attach the extract of the annual return with the Board's report in Form No. MGT.9, in case the web link of such annual return has been disclosed in the Board's report in accordance with sub-section (3) of section 92 of the Companies Act, 2013."

Details of Change

With this Amendment, MCA has notified that companies are no longer required to attach the extracts of Annual Return with the Board's report in Form No. MGT.9, in case the web link of such annual return has been disclosed in the Board's report in accordance with Section 92(3) of the Companies Act, 2013.

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

2) Commencement Notification, dated August 28, 2020

MCA has notified the amendment to Section 92(3) of the Companies Act, 2013 w.e.f. from August 28, 2020, which provides that every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.

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

3) The Companies (Compromises, Arrangements and Amalgamations) Second Amendment Rules, 2020 (December 17, 2020)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Details of Change

The definition of corporate action has been inserted vide rule 2(1) (e) and rule 26 A for providing procedure for Purchase of minority shareholding held in demat form.

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

4) Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) (Second Amendment) Regulations, 2020 (August 05, 2020)

Old provision

Record Date or Date of closure of transfer books

42 (1) The listed entity shall intimate the record date to all the stock exchange(s) where it is listed for the following purposes:

- (a) declaration of dividend;
- (b) issue of right or bonus shares;

- (c) issue of shares for conversion of debentures or any other convertible security;
- (d) shares arising out of rights attached to debentures or any other convertible security
- (e) corporate actions like mergers, de-mergers, splits and bonus shares, where stock derivatives are available on the stock of listed entity or where listed entity's stocks form part of an index on which derivatives are available;
- (f) such other purposes as may be specified by the stock exchange(s).

The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date.

New provision

Record Date or Date of closure of transfer books

42 (1) The listed entity shall intimate the record date for the following events to all the stock exchange(s) where it is listed or where stock derivatives are available on the stock of the listed entity or where listed entity's stock form part of an index on which derivatives are available:

- (a) declaration of dividend;
- (b) issue of right or bonus shares;
- (c) issue of shares for conversion of debentures or any other convertible security;
- (d) shares arising out of rights attached to debentures or any other convertible security
- (e) corporate actions like mergers, de-mergers, splits, etc.
- (f) such other purposes as may be specified by the stock exchange(s).

The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date:

Provided that in the case of rights issues, the listed entity shall give notice in advance of atleast three working days (excluding the date of intimation and the record date).

Details of change

SEBI has amended the provisions of Regulation 42 of the SEBI (LODR) Regulations, 2015, which, *inter alia*, provide that the listed entity shall intimate the record date for the events to all the stock exchange(s) where it is listed or where stock derivatives are available on the stock of the listed entity or where listed entity's stock form part of an index on which derivatives are available.

A listed entity was previously required to intimate the record date to the Stock Exchange, merely where the entity was listed. However by virtue of this amendment, a listed entity is required to make such intimation not only where it is listed on the stock exchange but also where stock derivatives are available on the stock of the listed entity or where listed entity's stock form part of

an index on which derivatives are available. The duration of notice for right issue is also reduced by virtue of inserting a proviso.

For more Details visit: https://www.sebi.gov.in/legal/regulations/aug-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2020_47274.html

5) Standardization of timeline for listing of securities issued on a private placement basis as under:

- i. SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (SEBI ILDS),**
- ii. SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (SEBI NCRPS),**
- iii. SEBI (Public Offer and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 (SEBI SDI) and**
- iv. SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (SEBI ILDM)**

(Circular No. SEBI/HO/DDHS/CIR/P/2020/198 dated October 05, 2020)

SEBI had been receiving requests from various market participants for clarification on the time period within which securities issued on private placement basis under SEBI ILDS, SEBI NCRPS, SEBI SDI and SEBI ILDM Regulations need to be listed after completion of allotment.

3. After discussions and taking feedback from market participants, SEBI has decided to stipulate the following timelines:

<i>S.No.</i>	<i>Details of Activities</i>	<i>Due Date</i>
<i>1</i>	<i>Closure of issue</i>	<i>T day</i>
<i>2</i>	<i>Receipt of funds</i>	<i>To be completed by T+2 trading days</i>
<i>3</i>	<i>Allotment of Securities</i>	
<i>4</i>	<i>Issuer to make listing application to stock Exchange(s)</i>	<i>To be completed by T+4 trading days</i>
<i>5</i>	<i>Listing permission from stock Exchange(s)</i>	

Depositories shall activate the ISINs of debt securities issued on private placement basis only after the Stock Exchange(s) have accorded approval for listing of such securities.

Further, in order to facilitate re-issuance of new debt securities in an existing ISIN, Depositories are advised to allot such new debt securities under a new temporary ISIN which shall be kept frozen. Upon receipt of listing approval from Stock Exchange(s) for such new debt securities, the debt securities credited in the new temporary ISIN shall be debited and the same shall be credited in the pre-existing ISIN of the existing debt securities, before they become available for trading.

Stock Exchange(s) are advised to inform the listing approval details to the Depositories whenever listing permission is given to debt securities issued on private placement basis.

4. In case of delay in listing of securities issued on privately placement basis beyond the timelines specified in para 2 above, the issuer shall;

4.1. pay penal interest of 1% p.a. over the coupon rate for the period of delay to the investor (i.e. from date of allotment to the date of listing)

4.2. be permitted to utilise the issue proceeds of its subsequent two privately placed issuances of securities only after receiving final listing approval from Stock Exchanges.

5. Clause 4(a) (ii) of the SEBI Circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2019/68 dated May 27, 2019 stands deleted.

6. The circular shall come into force with effect from December 01, 2020.

Details of change

SEBI has stipulated the timelines for various activities. Further, the depositories and stock exchanges were advised on various issues including activating the ISINs of debt securities issued on private placement, allot such new debt securities under a new temporary ISIN, listing approval details to the Depositories, etc.

For more details visit: <https://www.sebi.gov.in/legal/circulars/oct-2020/standardization-of-timeline-for-listing-of-securities-issued-on-a-private-placement-basis-47790.html>

6) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2020 (October 8, 2020)

The SEBI has carried out the amendments under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, namely:-

I. In regulation 54, -

a. sub-regulation (1) shall be substituted by the following, namely, —

“(1) In respect of its listed non-convertible debt securities, the listed entity shall maintain hundred per cent. Asset cover or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.”

b. sub-regulation 3 shall be omitted.

II. In regulation 56,-

a. in sub-regulation (1), in clause (c), the following new sub-clause shall be inserted after the existing sub-clause (iii), namely, -

“(iv) All covenants of the issue (including side letters, accelerated payment clause, etc.)”

b. in sub-regulation (1), the existing clause (d) along with the proviso, shall be substituted with the following, namely, -

“(d) a half-yearly certificate regarding maintenance of hundred percent asset cover or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, including compliance with all the covenants, in respect of listed non-convertible debt securities, by the statutory auditor, along with the half-yearly financial results:

Provided that the submission of half yearly certificate is not applicable where bonds are secured by a Government guarantee.”

III. In Schedule III,-

a. in Part A, under the Clause A, after the existing sub-clause 16, the following new sub-clause shall be inserted, namely,-

“17. Initiation of Forensic audit: In case of initiation of forensic audit, (by whatever name called), the following disclosures shall be made to the stock exchanges by listed entities:

a) The fact of initiation of forensic audit along-with name of entity initiating the audit and reasons for the same, if available;

b) Final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies) on receipt by the listed entity along with comments of the management, if any.”

They shall come into force on the date of their publication in the Official Gazette i.e. October 8, 2020.

BRIEF ANALYSIS

Asset Cover

Regulation 54(1) of SEBI LODR has been substituted and now listed companies have been permitted to maintain asset cover in respect of its listed non-convertible debt securities, at 100% asset cover or asset cover as per the terms of the offer document/ Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.

Documents and Intimation to Debenture Trustee

Vide Regulation 56(1) SEBI has included a new intimation to be made by the listed entity to their Debenture trustee, namely: “All covenants of the issue (including side letters, accelerated payment clause, etc.”

Under Regulation 56(1)(d), listed entities shall mandatorily submit a half-yearly certificate regarding maintenance of 100% asset cover to the Debenture Trustee. Now in line with the amendment a half-yearly certificate regarding maintenance of 100% asset cover as per the terms of the offer document/ Information Memorandum and/or Debenture Trust Deed, including compliance with all the covenants, shall be forward to the debenture trustee.

Moreover, the listed entities could earlier obtain this certificate from a practicing chartered accountant or a practicing company secretary, now this has to be mandatorily obtained from the Statutory Auditor of the Company.

Forensic Audit Disclosure

Para A of Part A of Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, requires the listed companies to disclose certain events or information upon occurrence without any application of the guidelines for materiality.

As per the amendment, companies will now be required to disclose to Stock Exchange about the forensic audit initiated along with the details as prescribed.

For more details visit: https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2020_47821.html

7. Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2020. (October 8, 2020)

The SEBI has carried out the amendments under the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, namely:-

I. In regulation 2,

a. in sub-regulation (1), clause (h) shall be substituted with the following, namely, -

“(h) **“Private placement”** means an offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum application, which satisfies the conditions specified in section 42 of the Companies Act, 2013.”

II. In regulation 15, the existing sub-regulation (2), shall be substituted with the following, namely,-

“(2) Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as prescribed under section 71 of Companies Act, 2013 and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts:

- a. Part A containing statutory/standard information pertaining to the debt issue.
- b. Part B containing details specific to the particular debt issue.”

III. In regulation 18, in sub-regulation (2), the words “twenty one days” shall be substituted with the words “fifteen days”.

IV. After regulation 21A and before regulation 22, the following new regulation shall be inserted, namely,-

“Creation of Security 21B. The issuer shall give an undertaking in the Information Memorandum that the assets on which charge is created are free from any encumbrances and in cases where the assets are already charged to secure a debt, the permission or consent to create a second or *paripassu* charge on the assets of the issuer has been obtained from the earlier creditor.”

Details of Change

*The definition of private placement under regulation 2 (1) (h) and regulation 15(2) of SEBI (ILDS) Regulation, 2008 are substituted. The time limit for notice of the proposed roll over under regulation 18(2) is reduced from 21 days to 15 days. Regulation 21B has been inserted relating to an undertaking that the assets on which charge is created are free from any encumbrances and in cases where the assets are already charged to secure a debt, the permission or consent to create a second or *pari-passu* charge on the assets of the issuer has been obtained from the earlier creditor*

For more details visit: <https://www.sebi.gov.in/legal/circulars/oct-2020/standardization-of-timeline-for-listing-of-securities-issued-on-a-private-placement-basis-47790.html>

Lesson 5 - Know Your Customer (KYC)

Entities permitted to undertake e-KYC Aadhaar Authentication service of UIDAI in Securities Market – Addition of NSE to the list

(Circular No. SEBI/HO/MIRSD/DOP/CIR/P/ 2020/167 dated September 08, 2020)

SEBI vide circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/80 dated May 12, 2020 permitted eight entities to undertake Aadhaar Authentication service of UIDAI subject to compliance of the conditions as laid down in this regard.

Government of India, Department of Revenue (DoR), vide Gazette Notification No. G.S.R. 516(E) dated August 20, 2020, notified “National Stock Exchange of India Limited” (NSE) as per the recommendation by Unique Identification Authority of India (UIDAI) and SEBI to undertake Aadhaar authentication service of the UIDAI under section 11A of the Prevention of Money-Laundering Act, 2002.

Details of Change

In view of the same, National Stock Exchange of India Limited shall undertake Aadhaar Authentication service of the UIDAI subject to compliance of the conditions as laid down in this regard.

For more details visit: <https://www.sebi.gov.in/legal/circulars/sep-2020/entities-permitted-to-undertake-e-kyc-aadhaar-authentication-service-of-uidai-in-securities-market-addition-of-nse-to-the-list-47502.html>

Lesson 6 - Signing and Certification

1) E-Form PAS-6 has been notified by MCA and shall be available for filing w.e.f. July 15, 2020.

Every unlisted public company governed by Rule-9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 shall submit E-Form PAS-6 to the Registrar with such fee as prescribed within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

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

2) Section 20 of the Companies (Amendment) Act, 2020 amended Section 92 (5) & (6) of the Companies Act, 2013 w.r.t. Annual Return

(i) Section 92 (5)

Old Penal Provision

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

New Penal Provision

If any company fails to file its annual return under Section 92(4) of the Companies Act, 2013, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 10000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2 lakhs in case of a company and ₹ 50000 in case of an officer who is in default.

Details of changes

Reduction in amount of monetary Penalty

(ii) Section 92 (6)

Old Penal Provision

If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of Section 92 of the Companies Act, 2013 or the rules made thereunder, he shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹ 5 Lakhs.

New Penal Provision

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

Details of Change

Fixation of Penalty for Certification of Annual Return by a company secretary in practice not in conformity with Section 92 of the Companies Act, 2013.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

3) Section 61 of the Companies (Amendment) Act, 2020 amends Section 441(5) of the Companies Act, 2013 w.r.t. Compounding of Certain Offences

Section 441 (5)

Old Penal Provisions

Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.

New Penal Provisions

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

Details of the Change

Penal provisions under section 441(5), which is related to non-compliance related to order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under 441(4), have been relaxed by omitting the punishment by way of imprisonment.

For more details visit: http://www.mca.gov.in/Ministry/pdf/SecondAmdtRules_24122020.pdf

**4) The Companies (Share Capital and Debentures) Second Amendment Rules, 2020
(December 24, 2020)**

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

For more details visit: http://www.mca.gov.in/Ministry/pdf/SecondAmdtRules_24122020.pdf

Lesson 8 – Audits

1. Securities and Exchange Board of India (Prohibition Of Insider Trading) (Second Amendment) Regulations, 2020 (October 29, 2020)

The SEBI has carried out the amendments under Securities and Exchange Board of India Prohibition of Insider Trading) Regulations, 2015, namely:

I. in regulation 7A, in sub-regulation (1), in clause (h), after sub-clause (iii), the following explanation shall be inserted, namely-

“Explanation. – Information shall be considered timely, only if as on the date of receipt of the duly completed Voluntary Information Disclosure Form by the Board, a period of not more than three years has elapsed since the date on which the first alleged trade constituting violation of insider trading laws was executed.”

II. in Schedule D,

i. in the note, for the words “securities laws”, the words “insider trading laws” shall be substituted;

ii. in the table, in the part III,

a. in clause 1, for the words “securities laws”, the words “insider trading laws” shall be substituted;

b. for clause 9, the following shall be substituted, namely, -

“9. Please describe in detail how the information submitted by you constitutes a violation of insider trading laws. The details must include specific information with respect to:

i) details of the securities in which insider trading is alleged;

ii) the unpublished price sensitive information based on which insider trading is alleged;

iii) date on which the unpublished price sensitive information was made public;

iv) details of circumstances/evidence leading to possession of unpublished price sensitive information by the alleged violator(s);

v) details of insiders/suspects and their trades (i.e. purchase/sale and quantity purchased/sold) along with dates/period of trades.”

c. in the clause 10, after the words and symbol “based on?” and before the words “Please attach”, the words and symbols “Please include self-certified copies of all the relevant documents.”, shall be inserted.

Details of Change

An explanation has been inserted to the definition ‘Original Information’ which provides that *“Information shall be considered timely, only if as on the date of receipt of the duly completed Voluntary Information Disclosure Form by the Board, a period of not more than three years has*

elapsed since the date on which the first alleged trade constituting violation of insider trading laws was executed”

As per Regulation 7B, an Informant shall submit Original Information by furnishing the Voluntary Information Disclosure Form to the Office of Informant Protection of the Board in the format and manner set out in Schedule D. With the amendment, SEBI has provided the details that must be included in the Voluntary Information Disclosure Form as under:

- (i) details of the securities in which insider trading is alleged;
- (ii) the unpublished price sensitive information based on which insider trading is alleged;
- (iii) date on which the unpublished price sensitive information was made public;
- (iv) details of circumstances/evidence leading to possession of unpublished price sensitive information by the alleged violator(s);
- (v) details of insiders/suspects and their trades (i.e. purchase/sale and quantity purchased/sold) along with dates/period of trades.

For more details visit: <https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-prohibition-of-insider-trading-second-amendment-regulations-2020-48084.html>

2) The Institute of Company Secretaries of India revised ICSI AUDITING STANDARDS (CSAS-1 to CSAS-4) (Revised version effective from 1st April, 2021)

The Standards are effective and recommendatory for Audit Engagements accepted by the Auditor on or after 1st July, 2019 and mandatory for Audit Engagements accepted by the Auditor on or after 1st April, 2021.

The objective of the Standard (CSAS-1) is to prescribe for the Auditor, principles and procedures to be followed while accepting or continuing with an Audit Engagement by agreeing to the terms of engagement with the Appointing Authority or any changes therein and matters relating thereto.

The objective of the Standard (CSAS-2) is to prescribe principles for an Auditor:

- (i) to conduct audit as per the specified audit process;
- (ii) to maintain documentation that provide:
 - (a) sufficient and appropriate record to form the basis for the Auditor’s Report; and
 - (b) evidence that the audit was planned and performed in accordance with the applicable Auditing Standards and statutory requirements.

The objective of the Standard (CSAS-3) is to enable the Auditor to lay down the basis and manner for evaluation of the conclusions drawn from the Audit Evidence obtained and express the opinion through written report.

The objective of the Standard (CSAS-4) is to lay down the principles for evaluation of statutory compliances and corporate conduct in relation thereto.

Details of Change:

The effective date for applicability of ICSI Auditing Standards has been revised.

For more details visit: <https://www.icsi.edu/media/webmodules/ASB.pdf>

Lesson 9 - Secretarial Audit

1) SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2020 (July 1, 2020)

I. After regulation 164 A, the following new regulation shall be inserted, namely,-

Addition of Regulation

“Optional pricing in preferential issue.

164B.(1) In case of frequently traded shares, the price of the equity shares to be allotted pursuant to the preferential issue shall be determined by regulation 164 or regulation 164B, as opted for.

(2) The price of the equity shares to be allotted pursuant to the preferential issue shall not be less than the higher of the following:

(a) the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the twelve weeks preceding the relevant date; or

(b) the average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(3) Specified securities allotted on a preferential basis using the pricing method determined under sub-regulation (2) shall be locked-in for a period of three years.

(4) The pricing method determined at sub regulation (2) shall be availed in case of allotment by preferential issue made between July 01, 2020 or from the date of notification of this regulation, whichever is later and December 31, 2020.

(5) All allotments arising out of the same shareholders approval shall follow the same pricing method.”

Details of change

SEBI has notified amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. SEBI inserted new regulation 164B termed as “optional pricing in preferential issue” under pricing in preferential issue in case of frequently traded shares.

For more details visit: https://www.sebi.gov.in/legal/regulations/jul-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2020_46991.html

2) The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020 (Notification No: G.S.R. 642(E), dated October 16, 2020)

The MCA vide its notification dated October 16, 2020 has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020 to further amend the Companies (Prospectus and Allotment of Securities) Rules, 2014.

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

Impact

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

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

3) Section 41 of the Companies (Amendment) Act, 2020 amends Section 204(4) of the Companies Act, 2013 w.r.t. Secretarial Auditor for Bigger Companies

Section 204(4)

Old Penal Provision

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

New Penal Provision

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

Details of the Change

The Penalty for non-compliance of Section 204 of Companies Act, 2013, which is related to Secretarial Audit for Bigger Companies, is restricted.

For more details visit:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 11 - Concepts and Principles of Other Audits

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

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

“(ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and (b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)”.

Impact

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

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

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

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

1) In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 2, in sub-rule (1), in clause (e), the following proviso shall be inserted, namely:- Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that:

(i) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII of the Companies Act, 2013.
(ii) details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report.

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

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

(i) first proviso shall be omitted;

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

Details of Change

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

Thereafter, under Rule 6(1) of CSR (Corporate Social Responsibility Policy) Rules, 2014, First proviso has been omitted which states that the CSR activities do not include the activities undertaken in pursuance of normal course of business of a company. Similarly, under Rule 4(1) "excluding activities undertaken in pursuance of its normal course of business" has been also omitted.

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

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

The MCA has notified the Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2020 to further amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

In Rule 6(1)(a) of the Companies (Appointment and Qualifications of Directors) Rules, 2014 for the words

"ten months"

the following shall be substituted

"thirteen months"

Impact

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

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

4.) Reporting to Stock Exchanges regarding violations under Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 relating to the Code of Conduct (CoC).

(Circular No. SEBI/HO/ISD/ISD/CIR/P/2020/135 dated July 23, 2020)

Vide Gazette Notification No. SEBI/LADNRO/GN/2020/23 dated July 17, 2020, Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) have been further amended.

In terms of clause 13 of Schedule B (in case of listed companies) and clause 11 of Schedule C (in case of intermediaries and fiduciaries) read with Regulation 9 of the PIT Regulations, the listed companies, intermediaries and fiduciaries shall promptly inform the Stock Exchange(s) where the concerned securities are traded, regarding violations relating to CoC under PIT Regulations in such form and manner as may be specified by the Board from time to time.

Details of Change

Listed companies, intermediaries and fiduciaries will have to promptly inform the stock exchange regarding violations relating to code of conduct prescribed under the insider trading norms. Further, they need to inform the exchanges about the violations in a prescribed format.

For more details visit: <https://www.sebi.gov.in/legal/circulars/jul-2020/reporting-to-stock-exchanges-regarding-violations-under-securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-relating-to-the-code-of-conduct-coc-47121.html>

Lesson 16 - Secretarial Audit – Fraud Detection and Reporting

Section 30 of the Companies (Amendment) Act, 2020 amends Section 143(15) of the Companies Act, 2013 w.r.t. Powers and Duties of Auditors and Auditing Standards

Section 143(15)

Old Penal Provision

If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12) of Section 143 of Companies Act, 2013, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

New Penal Provision

If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12) of Section 143, he shall,—

- (a) in case of a listed company, be liable to a penalty of five lakh rupees; and
- (b) in case of any other company, be liable to a penalty of one lakh rupees.

Details of the Change

Penalties for auditor, cost accountant, or company secretary in practice who do not comply with the provisions of 143(12) related to reporting of fraud have been fixed.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 19 - Due Diligence – I

1) SEBI (Substantial Acquisition of Shares and Takeover) (Third Amendment) Regulations, 2020 (July 1, 2020)

SEBI has notified amendments to SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 as under:-

I. In regulation 17, in sub-regulation (1), the following new proviso shall be inserted after the existing proviso, namely, –

“**Provided further** that in case of indirect acquisitions where public announcement has been made in terms of clause (e) of sub regulation (2) of regulation 13 of these regulations, an amount equivalent to hundred per cent of the consideration payable in the open offer shall be deposited in the escrow account.”

II. In regulation 17, in sub-regulation (3), in clause (c), the following new proviso shall be inserted after the existing proviso, namely,-

“**Provided further** that the deposit of securities shall not be permitted in respect of indirect acquisitions where public announcement has been made in terms of clause (e) of sub- regulation (2) of regulation 13 of these regulations.”

III. In regulation 18, after sub-regulation (11), the following new sub-regulation shall be inserted, namely,-

“(11A) Without prejudice to sub-regulation 11, in case the acquirer is unable to make payment to the shareholders who have accepted the open offer within such period, the acquirer shall pay interest for the period of delay to all such shareholders whose shares have been accepted in the open offer, at the rate of ten per cent per annum.

Provided that in case the delay was not attributable to any act of omission or commission of the acquirer, or due to the reasons or circumstances beyond the control of acquirer, the Board may grant waiver from the payment of interest.

Provided further that the payment of interest would be without prejudice to the Board taking any action under regulation 32 of these regulation or under the Act.”

IV. In regulation 22, in sub-regulation (2A), the words “other than through bulk deals or block deals,” shall be omitted.

Details of change

SEBI amended the provisions with respect to the escrow account in the case of indirect acquisition towards the consideration payable under the open offer. SEBI further laid down other procedure in case where the acquirer is unable to make payment to the shareholders who have accepted open offer within given time period.

For more details visit: https://www.sebi.gov.in/legal/regulations/jul-2020/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-third-amendment-regulations-2020_46990.html

2) Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2020

Rationale behind the Amendment

Rationalization of eligibility criteria and Disclosure requirements for Rights Issues

SEBI has amended SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 to rationalise eligibility criteria and disclosure requirements for Rights Issues' with an objective to make the fund raising through this route, easier, faster and cost effective.

The key amendments include:

1. Issuer shall be eligible to make truncated disclosures in terms of Part B :

- i. where it has been filing periodic reports/ statements/ information in compliance with Listing Regulations as applicable, for last one year instead of last three years as required earlier.
- ii. where three years have passed after change in management pursuant to acquisition of control or Listing consequent to a scheme of arrangement.

2. All other issuers not satisfying Part B eligibility conditions shall make disclosures in terms of new set of proposed disclosures, i.e., Part B-1. Part B-1 disclosures would be more detailed than Part B, but truncated compared to Part A, which is meant for IPO/FPO offer document.

3. Disclosure requirements under Part B have been rationalized to avoid duplication of information in letter of offer, especially the information which is already available in public domain and is disclosed by the companies in compliance with the disclosure requirements under SEBI Listing regulations.

4. Threshold increased from Rs. 10 crores to Rs. 50 crores, for filing requirement of Rights issue draft letter of offer with the Board for its observations.

5. Mandatory 90% minimum subscription criteria for Rights Issue shall not be applicable to those issuers where object of the issue involves financing other than financing of capital expenditure for

a project, provided that the promoters and promoter group of the issuer undertake to subscribe fully to their portion of rights entitlement.

6. Issuer shall be eligible to make Fast Track Rights Issue, in case of pending show cause notices in respect to adjudication, prosecution proceedings and audit qualification, provided that necessary disclosures along with potential adverse impact on the issuer are made in the letter of offer.

The amendments will be effective from September 28, 2020.

For more details visit: https://www.sebi.gov.in/media/press-releases/sep-2020/rationalization-of-eligibility-criteria-and-disclosure-requirements-for-rights-issues_47638.html

https://www.sebi.gov.in/legal/regulations/sep-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-fourth-amendment-regulations-2020_47712.html

Lesson 20 - Due Diligence – II

1) Section 7 of the Companies (Amendment) Act, 2020 amends Section 40(5) of the Companies Act, 2013 w.r.t. Securities to be dealt with in Stock Exchanges

Section 40(5)

Old Penal Provision

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

New Penal Provision

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

Details of change

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

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

2) Section 12 of the Companies (Amendment) Act, 2020 amended Section 64(2) of the Companies Act, 2013 w.r.t. Notice to be Given to Registrar for Alteration of Share Capital

Section 64(2)

Old Penal Provision

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

New Penal Provision

In case a company fails to comply with the provisions of Section 64(1) of the Companies Act, 2013, w.r.t. filing of notice of alteration or increase or redemption of share capital along with an altered memorandum with the Registrar within 30 days, such company and every officer who is in default shall be liable to a penalty of ₹ 500 for each day during which default continues subject to a maximum of ₹ 5 lakhs in case of a company and ₹ 1 lakhs in case of an officer who is in default.

Details of changes

Reduction in amount of monetary penalty

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

3) Section 14 of the Companies (Amendment) Act, 2020 omitted Section 68(11) of the Companies Act, 2013 w.r.t. Power of Company to Purchase its Own Securities —

Section 68(11)

Old Penal Provision

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

New Penal Provision

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

Details of Changes

Removal of Imprisonment for Non-compliance of buyback provisions

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

4) Section 8 of the Companies (Amendment) Act, 2020 omitted Section 48(5) of the Companies Act, 2013 w.r.t. Variation of Shareholders' Rights.

Section 48(5)

Old Penal Provisions

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

Details of Changes:

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

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

5) Section 9 of the Companies (Amendment) Act, 2020 amended Section 56(6) of the Companies Act, 2013 w.r.t. Transfer and Transmission of Securities.

Section 56(6)

Old Penal Provision

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

New Penal Provision

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

Details of Changes:

Reduction in amount of monetary penalty

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

6) Section 10 of the Companies (Amendment) Act, 2020 omitted Section 59(5) of the Companies Act, 2013 w.r.t. Rectification of Register of Members.

Section 59(5)

Old Penal Provision

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

Details of changes:

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

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

7) Section 17 of the Companies (Amendment) Act, 2020 amended Section 88 (5) of the Companies Act, 2013 w.r.t. Register of Members.

Section 88 (5)

Old Penal Provision

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

New Penal Provision

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

Details of changes:

Fixed penalty for company and reduced penalty for officer in default along with continuing penalty.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

8) Section 18 of the Companies (Amendment) Act, 2020 amended Section 89 (5) & (7) of the Companies Act, 2013 w.r.t. Declaration in Respect of Beneficial Interest in any Share.**(i) Section 89(5)****Old Penal Provision**

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

New Penal Provision

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

Details of changes:

Penalty for failure to submit declaration in respect of beneficial Interest in any share has been substituted.

(ii) Section 89(7)**Old Penal Provision**

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

New Penal Provision

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

Details of changes

Penalty for failure to file a return with the Registrar of Companies in respect of such declaration of beneficial Interest in any share has been substituted.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

9) Section 19 of the Companies (Amendment) Act, 2020 amended Section 90 (10) &(11) of the Companies Act, 2013 w.r.t. Register of Significant Beneficial Owners in a company.

(i) Section 90 (10)

Old Penal Provision

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

New Penal Provision

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

Details of changes

Omission of Imprisonment and Penalty for default in declaration of significant beneficial ownership in the company has been substituted.

(ii) Section 90(11)

Old Penal Provision

If a company, required to maintain register under Section 90 (2) and file the information under Section 90(4) or required to take necessary steps under Section 90 (4A) of the Companies Act,

2013, fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 10 Lakhs but which may extend to ₹ 50 Lakhs and where the failure is a continuing one, with a further fine which may extend to ₹ 1000 for every day after the first during which the failure continues.

New Penal Provision

If a company, required to maintain register under Section 90 (2) and file the information under Section 90(4) or required to take necessary steps under Section 90 (4A) of the Companies Act, 2013, fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of ₹ 1 Lakh and in case of continuing failure, with a further penalty of ₹ 500 for each day, after the first during which such failure continues, subject to a maximum of ₹ 5 Lakhs and every officer of the company who is in default shall be liable to a penalty of ₹25000 and in case of continuing failure, with a further penalty of ₹ 200 for each day, after the first during which such failure continues, subject to a maximum of ₹ 1 Lakh.

Details of changes

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

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

10) Section 15 of the Companies (Amendment) Act, 2020 omitted Section 71 (11) of the Companies Act, 2013 w.r.t. Debentures.

Section 71 (11)

Old Penal Provision

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

Details of Changes

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

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

11) Section 16 of the Companies (Amendment) Act, 2020 amended Section 86 (1) of the Companies Act, 2013 w.r.t. Punishment for Contravention of provisions relating to registration of charges

Section 86(1)

Old Penal Provision

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

New Penal Provision

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

Details of changes

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

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

12) Section 22(i) of the Companies (Amendment) Act, 2020 amended Section 117(2) of the Companies Act, 2013 w.r.t. Resolutions and Agreements to be filed.

Section 117(2)

Old Penal Provision

If any company fails to file the resolution or the agreement under Section 117(1) of the Companies Act, 2013 before the expiry of the period specified therein, such company shall be liable to a penalty of ₹ 1 Lakh and in case of continuing failure, with further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 25 Lakhs and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ₹ 50,000 and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

New Penal Provision

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

Details for change

Reduced monetary penalties

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

13) Section 3 of the Companies (Amendment) Act, 2020 amends Section 8(11) of the Companies Act, 2013 w.r.t. Default in complying with the requirements relating to formation of companies with charitable objects, etc.

Old Penal Provision

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

New Penal Provision

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

Details of change:

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

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

14) Section 28 of the Companies (Amendment) Act, 2020 amends Section 137(3) of the Companies Act, 2013 w.r.t. Copy of Financial Statement to be Filed with Registrar

Section 137(3)

Old Penal provision

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

New Penal provision

If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2) of Section 137 of Companies Act, 2013, as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of 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 with the provisions of section 137 of Companies Act, 2013, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.

Details of the Change

Penalties for non-filling of copy of financial statements are reduced for the company and director.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

15) Section 29 of the Companies (Amendment) Act, 2020 amends Section 140(3) of the Companies Act, 2013 w.r.t. Removal, Resignation of Auditor and Giving of Special Notice

Section 140(3)

Old Penal Provision

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

New Penal Provision

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

Details of the Changes

Penalty for Auditor for non-filling of statement in prescribed form within prescribed time from the date of resignation with the registrar or the Comptroller and Auditor-General of India, as the case may be, is reduced.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

16) Section 31 of the Companies (Amendment) Act, 2020 amends Section 147 of the Companies Act, 2013 w.r.t. Punishment for Contravention

Section 147

Old Penal Provision

If any of the provisions of sections 139 to 146 (both inclusive) of Companies Act, 2013 is contravened, 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 imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

New Penal provision

If any of the provisions of sections 139 to 146 (both inclusive) of Companies Act, 2013 is contravened, 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.

Details of the Change

The punishment of Imprisonment is omitted for the offences of Sections 139 to 146(both inclusive) of Companies Act, 2013.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

17) Section 33 of the Companies (Amendment) Act, 2020 amends Section 165 (6) of the Companies Act, 2013 w.r.t. Number of Directorship

Section 165(6)

Old Penal Provision

If a person accepts an appointment as a director in contravention of sub-section (1) of Section 165, he shall be liable to a penalty of five thousand rupees for each day after the first during which such contravention continues.

New Penal Provision

If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.

Details of the Changes

Penalty for non-compliance related to maximum number of directorship is reduced.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

18) Section 35 of the Companies (Amendment) Act, 2020 amends Section 172 of the Companies Act, 2013 w.r.t. Punishment under Chapter XI

Old Penal Provision

If a company contravenes any of the provisions of Chapter XI 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.

New Penal Provision

If a company is in default in complying with any of the provisions of Chapter XI and for which no specific penalty or punishment is provided therein, the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees, and in case of continuing failure, with a further penalty of five hundred rupees for each day during which such failure continues, subject to a maximum of three lakh rupees in case of a company and one lakh rupees in case of an officer who is in default."

Details of the Change

Punishment for non-compliance under chapter XI is reduced and different maximum amount is fixed for Company and officer(s).

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

19) Section 36 of the Companies (Amendment) Act, 2020 amends Section 178(8) of the Companies Act, 2013 w.r.t. Nomination and Remuneration Committee and Stakeholders Relationship Committee

Section 178(8)

Old Penal Provision

In case of any contravention of the provisions of section 177 and section 178, 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:

New Penal Provision

In case of any contravention of the provisions of section 177 and section 178, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of one lakh rupees:

Details of the Changes

Penalty for non-compliance of provision of Section 177(Audit Committee) and 178(Nomination and Remuneration Committee and Stakeholders Relationship Committee) of Companies Act, 2013, is fixed differently for Company and Officer and punishment by way of imprisonment omitted.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

20) Section 38 of the Companies (Amendment) Act, 2020 amends Section 187(4) of the Companies Act, 2013 w.r.t. Investment of Company to be held in its Own Name

Section 187(4)

Old Penal Provision

If a company contravenes the provisions of section 187 of Companies Act, 2013, the company shall be punishable with fine which shall not be less than 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.

New Penal Provision

If a company is in default in complying with the provisions of section 187 of Companies Act, 2013, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.”

Details of the Changes

Penal provisions for contravention related to Investment of the Company, is fixed and the punishment by way of imprisonment is omitted.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

21) Section 42 of the Companies (Amendment) Act, 2020 amends Section 232(8) of the Companies Act, 2013 w.r.t. Mergers and Amalgamations of Companies

Section 232(8)

Old Penal Provisions

If a transferor company or a transferee company contravenes the provisions of section 232, 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.

New Penal Provisions

If a company fails to comply with sub-section (5) of Section 232, the company and every officer of the company who is in default shall be liable to a penalty of twenty thousand rupees, and where

the failure is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of three lakh rupees.

Details of Change

Penalty for non-compliance of section 232(5) of Companies Act, 2013, which is related to causing a certified copy of the order to be filed with the Registrar for registration, is reduced and the punishment by way of imprisonment omitted.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

22) Section 43 of the Companies (Amendment) Act, 2020 amends Section 242(8) of the Companies Act, 2013 w.r.t. alteration in Memorandum or Articles which is inconsistent with the order of the Tribunal under section 242(1)

Section 242(8)

Old Penal Provision

If a company contravenes the provisions of sub-section (5) of Section 242, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default 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.

New Penal Provision

If a company contravenes the provisions of sub-section (5) of Section 242, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Details of Change

The punishment of Imprisonment is omitted.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

23) Section 47 of the Companies (Amendment) Act, 2020 amends Section 302 of the Companies Act, 2013 w.r.t. Dissolution of Company by Tribunal.

Section 302

Old Penal Provisions

- (1) When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.
- (2) The Tribunal shall on an application filed by the Company Liquidator under sub-section (1) or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- (3) A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.
- (4) If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

New Penal Provisions

- (1) When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.
- (2) The Tribunal shall on an application filed by the Company Liquidator under sub-section (1) or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- (3) The Tribunal shall, within a period of thirty days from the date of the order,—
 - (a) forward a copy of the order to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company; and
 - (b) direct the Company Liquidator to forward a copy of the order to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.”

Details of the Changes

The duties of the forwarding the order and directing the Company Liquidator is entrusted to tribunal and the penalty provision is omitted.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

24. Section 50 of the Companies (Amendment) Act, 2020 amends Section 348 (6) & 348 (7) of the Companies Act, 2013 w.r.t. Information as to Pending Liquidations

Section 348 (6) & (7)

Old Penal Provisions

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

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

New Penal Provision

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

(7) Omitted

Details of the change

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

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

25. Section 51 of the Companies (Amendment) Act, 2020 amends Section 356 (2) of the Companies Act, 2013 w.r.t. Information as to Pending Liquidations

Section 356 (2)

Old Penal Provision

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

New Penal Provision

The Tribunal shall—

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

Details of the Change

The duties of the forwarding the order is entrusted to tribunal and the penalty provision is omitted.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

26. Section 54 of the Companies (Amendment) Act, 2020 amends Section 392 of the Companies Act, 2013 w.r.t. Punishment for Contravention of Chapter XXII

Section 392

Old Penal Provision

Without prejudice to the provisions of section 391 of Companies Act, 2013, if a foreign company contravenes the provisions of Chapter XXII, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees, or with both.

New Penal Provision

Without prejudice to the provisions of section 391 of Companies Act, 2013, if a foreign company contravenes the provisions of Chapter XXII, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

Details of the Change

Imprisonment for non-compliance of Chapter XXII is omitted.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

27. Section 57 of the Companies (Amendment) Act, 2020 amends Section 405(4) of the Companies Act, 2013 w.r.t. Power of Central Government to Direct Companies to Furnish Information or Statistics.

Section 405(4)

Old Penal Provision

If any company fails to comply with an order made under sub-section (1) or sub-section (3) of Companies Act, 2013, or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to 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.

New Penal Provision

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

Details of the Change

Penalty under section 405 (4) which is related to non-compliance of Section 405(1) & 405(3) of Companies Act, 2013 are fixed and punishment by way of imprisonment is omitted.

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

28.) Section 63 of the Companies (Amendment) Act, 2020 amends Section 450 of the Companies Act, 2013 w.r.t. Punishment where no specific penalty or punishment is provided

Section 450

Old Penal Provision

If a company or any officer of a company or any other person contravenes any of the provisions of Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this 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.

New Penal Provision

If a company or any officer of a company or any other person contravenes any of the provisions of Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be ¹[liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

Details of the change

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

For more details visit: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

29) Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2020 (July 22, 2020)

The Securities and Exchange Board of India amended the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. These regulations may be called the Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2020. They shall come into force on the date of their publication in the Official Gazette.

(i) Regulation 15(2)

Old Regulation

Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -

(a) remit the settlement amount forming part of the settlement terms, not later than fifteen calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by fifteen calendar days:

Explanation. – Remittance of settlement amount shall be done by way of a demand draft drawn in favour of 'Securities and Exchange Board of India' payable at Mumbai or by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised mode of payment.

New Regulation

Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -

(a) remit the settlement amount forming part of the settlement terms, not later than thirty calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by sixty calendar days, only after receipt of an application seeking extension of time within thirty days from the date of receipt of notice of demand:

Explanation. – Remittance of settlement amount shall be done by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised electronic mode of payment.

Details of change

The time limit for remit the settlement amount forming part of the settlement terms is increased.

(ii) Chapter VIII relating to notice of settlement is omitted.

(iii) In regulation 34, sub regulation 4 is inserted are under, -
Notwithstanding the omission of Chapter VIII, a Settlement Notice issued under regulation 18, shall be dealt with as if the Chapter VIII is still in force and continue to be dealt with accordingly.”

Details of change

Omission of chapter VIII does not affect the settlement notice under regulation 18.

(iv) Last row of Table VI of Chapter VI of Schedule II is substituted and Table X of Chapter VI of Schedule II is substituted.

For more details visit: https://www.sebi.gov.in/legal/regulations/jul-2020/securities-and-exchange-board-of-india-settlement-proceedings-amendment-regulations-2020_47147.html

30. Non-compliance with provisions related to continuous disclosures

(Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/231 dated November 13, 2020)

Rationale behind the Circular

1. SEBI has prescribed continuous disclosure norms for issuers of listed Non-Convertible Debt Securities, Non-Convertible Redeemable Preference Shares (NCRPS) and Commercial Papers, which are as follows:

- (a) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI LODR Regulations”) for issuers of listed Non-Convertible Debt Securities and/or NCRPS.
- (b) SEBI circular nos. SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October 22, 2019 and SEBI/HO/DDHS/DDHS/CIR/P/2019/167 dated December 24, 2019 for issuers of listed Commercial Papers.

2. Further, the following provisions provide for monitoring of compliance and imposition of fines by stock exchanges:

- (a) Sub regulation (1) of Regulation 97 of SEBI LODR Regulations, provides for monitoring of compliance by listed entities with the provisions of the regulation by recognized Stock Exchanges. Further, sub regulation (1)(a) of Regulation 98 of SEBI LODR Regulations provides for imposition of fines by Stock Exchanges for contravention of provisions of the regulation by listed entities.
- (b) SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October 22, 2019 provides for a framework for imposition of fine to be put in place by stock exchanges in cases of non-compliance and/ or inappropriate disclosures by issuers of listed Commercial Papers.

3. In respect of listed specified securities (i.e. equity shares and convertible securities), SEBI issued circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12, dated January 22, 2020, specifying a uniform structure for imposing fines for issuers not in compliance with certain provisions of SEBI LODR Regulations.

4. Accordingly, in order to ensure effective enforcement of continuous disclosure obligations by issuers of listed Non-Convertible Debt Securities or NCRPS or Commercial Papers, it has been decided to lay down a similar uniform structure for imposing fines for non-compliance with continuous disclosure requirements after discussion with market participants.

5. In view of the above, in the interests of investors and the securities market, the Stock Exchanges shall levy fine and take action in case of non-compliances with continuous disclosure requirements by issuers of listed Non-Convertible Debt Securities and/ or NCRPS and/ or Commercial Papers as specified in Annexure I and Annexure II of this circular respectively.

Stock Exchanges may deviate from the above, if found necessary, only after recording reasons in writing.

6. In case a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action under this circular in consultation with each other.

7. The recognized stock exchanges shall take necessary steps to implement this circular and shall disclose on their website the action(s) taken against the entities for non-compliance(s); including the details of the respective requirement, amount of fine levied/ action taken etc.

8. The amount of fine realized as per the structure provided in Annexure I of this circular shall be credited to the "Investor Protection Fund" of the concerned recognized stock exchange.

9. The fines specified in Annexure I of this circular shall continue to accrue till the time of rectification of the non-compliance and to the satisfaction of the concerned recognized stock exchange. Such accrual shall be irrespective of any other disciplinary/enforcement action(s) initiated by recognized stock exchange(s)/SEBI.

10. The recognized stock exchanges may keep in abeyance the action or withdraw the action in specific cases where specific exemption from compliance with the requirements for continuous disclosures /moratorium on enforcement proceedings has been provided for under any Act, Court/Tribunal Orders etc.

11. The above provisions are without prejudice to the power of SEBI to take action under the securities laws.

12. The recognized stock exchanges are advised to bring the provisions of this circular to the notice of issuers of listed Non-Convertible Debt Securities, NCRPS, Commercial Papers.

13. This provisions mentioned in this circular shall come into force for compliance period ending on or after December 31, 2020.

Details of Change

In order to ensure effective enforcement of continuous disclosure obligations by issuers of listed Non-Convertible Debt Securities or NCRPS or Commercial Papers, SEBI has laid down structure for imposing fines for non-compliance with continuous disclosure requirements

For more details visit: https://www.sebi.gov.in/legal/circulars/nov-2020/non-compliance-with-provisions-related-to-continuous-disclosures_48171.html

Miscellaneous

1. Introduction of Unified Payments Interface (UPI) mechanism and Application through Online interface and Streamlining the process of Public issues of securities under:

- **SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS Regulations),**
- **SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (NCRPS Regulations),**
- **SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 (SDI Regulations) and**
- **SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (ILDM Regulations)**

(Circular No. SEBI/HO/DDHS/CIR/P/2020/233 dated November 23, 2020)

1. SEBI Circular No. CIR/DDHS/P/121/2018 dated August 16, 2018 (hereinafter to be referred as ‘ASBA Circular’) lays down the process for payment for applications in public issue of debt securities through the facility of ASBA.

2. Introduction of Unified Payments Interface (UPI) mechanism and an additional mode for application through online (app / web) interface in public issues of securities captioned above:

2.1. After consultation with stakeholders, it has been decided to introduce the following in addition to the already specified modes under the ASBA Circular:

2.1.1. Providing an option to investors to apply in public issues of debt securities through the app / web interface of Stock Exchange(s) with a facility to block funds through Unified Payments Interface (UPI) mechanism for application value upto Rs. 2 Lac;

2.1.2. Permitting the UPI mechanism to block funds for application value upto Rs. 2 Lac submitted through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants).

3. The process flow for applying through online interface of stock exchanges or intermediaries and availing the option of blocking funds through UPI mechanism is placed at **Annex I** to this Circular.

4. New entities / mechanisms part of the public issue process using UPI

- 1.1. **National Payments Corporation of India (NPCI):** NPCI, a Reserve Bank of India (RBI) initiative, is an umbrella organization for all retail payments in India. It has been set up with the guidance and support of the Reserve Bank of India (RBI) and Indian Banks Association (IBA);
- 1.2. **Unified Payments Interface (UPI):** UPI is an instant payment system developed by the NPCI. It enables merging several banking features, seamless fund routing & merchant

payments into one hood. UPI allows instant transfer of money between any two persons' bank accounts using a payment address which uniquely identifies a person's bank account.

- 1.3. **Sponsor Bank:** Sponsor Bank means a Banker to the Issue registered with SEBI which is appointed by the Issuer to act as a conduit between the Stock Exchanges and NPCI in order to push the mandate collect requests and / or payment instructions of the retail investors into the UPI.

5. Validation by Stock Exchanges and Depositories

5.1. The details of investor viz. PAN, DP ID / Client ID, entered on the Stock Exchange platform at the time of bidding, shall be validated by the Stock Exchange/s with the Depositories on real time basis.

5.2. Stock Exchanges and Depositories shall put in place necessary infrastructure for this purpose.

6. Other requirements

6.1. Stock Exchanges shall update demand data on working days on their websites which shall include all the UPI (accepted/pending) and ASBA bids; 'Working day' for this purpose shall be the working day of the Stock Exchange on which debt securities are listed.

6.2. The additional text of data fields required to be included in the Application-and-bidding-form relating to UPI is placed at **Annex II** to this Circular. The roles of the Issuer, Registrar and Collecting Banks is given at **Annex III** of this Circular.

6.3. The details of commission and processing fees payable to each intermediary and the timelines for payment shall be disclosed in the offer document.

6.4. The intermediaries shall provide necessary guidance to their investors in use of UPI while making applications in public issues.

6.5. All entities involved in the process shall co-ordinate with one another to ensure completion of listing of securities and commencement of trading by T+6 day.

6.6. Stock Exchanges shall formulate and disclose the operational procedure for applying through the app / web based interface developed by them in order to apply in public issue on their websites.

6.7. The Merchant Banker shall ensure that the process of applying through the app / web interface developed by the Stock Exchanges as well as the additional payment mechanism through UPI is disclosed in the offer document.

6.8. All entities involved in the process are advised to take necessary steps to ensure compliance with this circular.

Applicability of this circular

7. The provisions of this circular shall be applicable to a public issue of securities under the captioned Regulations which opens on or after January 01, 2021. Stock Exchanges, NPCI, Sponsor Banks and Self Certified Syndicate Banks shall make required changes to implement the same from January 1, 2021. SEBI Circular no. CIR/IMD/DF-1/20/2012 dated July 27, 2012 shall stand repealed from that date.

Details of Changes

SEBI has Introduced Unified Payments Interface (UPI) mechanism and Application through Online interface and Streamlining the process of Public issues of securities under SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS Regulations), SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (NCRPS Regulations), SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 (SDI Regulations) and SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (ILDM Regulations).

For more details visit: <https://www.sebi.gov.in/legal/circulars/nov-2020/introduction-of-unified-payments-interface-upi-mechanism-and-application-through-online-interface-and-streamlining-the-process-of-public-issues-of-securities-under-sebi-issue-and-listing-of-debt-48235.html>