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From the Desk of the Chairman...
CS Rahul Sahasrabuddhe

ब्रह्मण्याधायकर्माणिस्यंगत्यंक्तवाकरोतिः।
लिप्यतेनसपापपद्मपत्रलमवाम्भसा॥

[One who performed his duty without attachment, surrendering the results unto the Supreme Lord is unaffected by sinful action as the lotus leaf untouched by water]

- BhagavadGeeta Chapter 5 Verse 10

The mankind, amongst all living beings, has been gifted with the super intellectual power to discover and create something new. However, in this race of so-called development, we have always neglected the Mother Nature and because of this behaviour of us, the Mother Nature in its true majesty, signalled the mankind to reconsider its approach towards superiority behaviour at the cost of nature’s balance. These signals are in the forms of earthquakes, Tsunami, Pandemics, etc.

But we have always put ourselves above all and endangered the nature for the sake of our personal convenience. Considering the same approach at micro level, personal interest of oneself has always overpowered against organizational interest and this approach has degraded the governance system in corporate world.
When we look back at our ancient texts like Vedas, Upanishads, Bhagavad Geeta, etc; simple message is conveyed through all these divine texts and that is detachment of oneself with the materialistic things. However, when we adopt and implement this principle at corporate level, one should always prioritize organizational goal over personal goals.

While performing actions to achieve organizational vision, one should neither expect undue credit nor immoderate rewards of any kind. One should always ensure doing his own duties without thinking of what others will think and react. It is none of the business of true leaders. True leaders are those who only think and act for the betterment of their organization and its stakeholders and public at large. When the leaders performs with ethics, morale and detached action for the furtherance of the organizational goals, their actions are always acknowledged and that is the true divinity of detached action (Nishkam Karma) or selfless action.

We, team ICSI-WIRC, always strive to implement this principle and has left no stone unturned to fulfill the expectations of the ICSI and its various stakeholders viz. Members, Students, Employees, Government, etc.

We all know that the Year 2020 had put great challenges to the mankind in terms of COVID-19 World Pandemic and enforced choice between Humanism and Materialism. However, during such challenging situation, ICSI-WIRC had always put in its best efforts to serve its members and students in all the ways possible like conducting webinars for upgrading the knowledge and skills of members and students, Virtual Placements, Academic Collaborations, Online Coaching facilities, and many more.

It is needless to say that it would not have been possible to do all these, from career awareness programs to organizing National Convention, without the wholehearted support of members and students, the Central Council, my colleagues on WIRC Regional Council, managing committee members of various chapters under ICSI-WIRC, employees of WIRC and its chapters, employees of ICSI HQ, regulators, other academic and statutory bodies, etc.

This is being my last message as Chairman of ICSI WIRC, I wish all the success to the new office bearers of the WIRC and look forward to contribute to my mother Institute in all ways possible so as to take it forward to the new height with flying colors.

Yours Truly,
CS Rahul Sahasrabuddhe
Chairman
WIRC of ICSI

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NOTE TO READERS

The Government had introduced the Companies (Amendment) Bill 2020 in the Lok Sabha on March 17, 2020 and now, the bill has been passed in the both houses of the Parliament. The key objective of the Amendment Act is to decriminalize various offences, to unclog NCLT and to provide further ease of doing business to corporates. The Amendment Act received the assent of the President on September 28, 2020.

The Ministry of Corporate Affairs (MCA) has extended the LLP Settlement Scheme, 2020 and Companies Fresh Start Scheme, 2020. The MCA has granted extension to the Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act. MCA has also extended time for extra-ordinary general meeting through Video Conference (VC) or Other Audio-Visual Means (OAVM) or passing of certain items only through postal ballot without convening general meeting. Furthermore, MCA has also extended the timeline for several other compliances.

Considering the present pandemic situation, SEBI has also amended several Regulations and extended the due dates for compliances.

The President on the September 28, 2020 gave his assent on The Code on Social Security, 2020. The objective of this Code is to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organized or unorganized or any other sectors or for matters connected therewith or incidental thereto. The Parliament has also received the assent of the President on the September 28, 2020 on the Occupational Safety, Health and Working Conditions Code, 2020. The objective of the Code is to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.

There are several amendments and new legislations introduced by the Government in recent times. The Government has also extended the timelines for compliances under several legislations and regulations. At the time of reading and referring the articles published in the present issue of the FOCUS, the readers are requested to take into consideration the recent changes / amendments / extensions / reliefs introduced by the Government. There might be some change in the timelines for compliance due dates, as mentioned above.

Yours Truly,

CS Rahul Sahasrabuddhe
Chairman
WIRC of ICSI

*****
Companies (Amendment) Act, 2020 – A Compliance Guide to Corporate Sector

C.B. Prabhimirashi
Practicing Company Secretary
Pune

In view of constant endeavor of the Government to facilitate greater ease of living to law abiding corporates, a Company Law Committee (CLC) consisting of representatives from Ministry of Corporate Affairs, industry chambers, professional institutes and legal fraternity was constituted on the 18th September, 2019, to give recommendations to decriminalize some more provisions of the Act, based on their gravity and to recommend other concomitant measures to provide further ease of living for corporates in the country. CLC submitted its report on 14th November, 2019.

Based on the recommendations of the CLC and internal review by the Government, the Companies (Amendment) Act, 2020 seeks to de-criminalise certain offences under the Act in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest. Apart of decriminalization, the Chapter on Producer Companies has been incorporated in the Act itself besides changes in definition of listed company, CSR provisions, listing of securities abroad, periodical returns by unlisted companies, remuneration of Independent Directors and Non-Executive Directors in the event of inadequacy of profits, etc.

The Companies (Amendment) Act, 2020

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<td>19th September, 2020</td>
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A. Section-wise analysis of the amendments:

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<td>Amendments related to ‘Ease of living for corporates’</td>
<td>Section 2(52) - Definition of ‘listed company’</td>
<td>The Central Government has been empowered to exclude certain companies, based on listing of certain securities on recognized stock exchanges, as may be provided by rules, in consultation with SEBI from the definition of listed companies. Thus, companies which list only debt securities (NCDs) may be excluded from the definition of</td>
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<tr>
<td>Section 5</td>
<td>Section 23- Public offer and private placement</td>
<td>A class of public companies will be allowed to list certain class of securities on stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be provided by rules. The Central Government has been empowered to exempt, by notification, any class or classes of public companies referred to above from any of the provisions of Chapter III (Prospectus and Allotment of Securities), Chapter IV (Share Capital and Debentures), section 89 (Declaration in respect of beneficial interest in any share), section 90 (Register of significant beneficial owners in a company) or section 127 (Punishment for failure to distribute dividends) of the Act.</td>
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<tr>
<td><strong>Amendments related to ‘Ease of Compliances’</strong></td>
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<td>Section 4</td>
<td>Section 16- Rectification of name of company</td>
<td>The time limit of compliance of direction given by the Central Government to change the name of company has been reduced from 6 months to 3 months. Further, the Central Government has been empowered to allot a new name to the company, in case of default in complying with its direction instead of imposing punishment for non-compliance for such default. The company is however not prevented from subsequently changing its name.</td>
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<td>Section 11</td>
<td>Section 62- Further issue of share capital</td>
<td>The Central Government is empowered to prescribe days lesser than 15, for deeming decline of offer of rights issue. This will reduce the timelines for applying for rights issues.</td>
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<td>Section 18</td>
<td>Section 89- Declaration in respect of beneficial interest in any share</td>
<td>New sub-section (11) has been inserted to enable the Central Government to notify a class or classes of persons who shall, unconditionally or subject to such conditions as may be specified, be exempted from complying with section 89 [except sub-section (10)].</td>
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<tr>
<td>Section 22</td>
<td>Section 117- Resolutions and agreements to be filed</td>
<td>The Central Government is empowered to exempt any class of NBFCs and any class of HFCs from filing of resolutions passed to grant loans or give guarantees or to provide security in respect of loans in the ordinary course of their business. Earlier, only Banking Companies were exempted.</td>
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<td>Section 27</td>
<td>Section 135- Corporate Social Responsibility</td>
<td>Now, the companies, which spend an amount in excess of the requirement of 2%, will be allowed to set off such excess amount out of their obligation in the succeeding financial years after complying with the prescribed rules.</td>
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New sub-section (9) has been inserted to provide that the requirement of constitution of CSR Committee shall not be applicable, in case the amount required to be spent on CSR does not exceed Rs. 50 Lakhs and the functions of CSR Committee in such a case, may be discharged by the Board of directors.

**Amendments related to further strengthen the ‘Corporate Governance’**

| Section 25 | **Section 129A-** Periodical financial results | A new section 129A has been inserted to empower the Central Government to provide by rules such class or classes of unlisted companies to prepare periodical financial results of the company, audit or limited review thereof and their filing with Registrar within 30 days from the end of that period as specified in the rules. |

| Section 32 | **Section 149-** Company to have Board of Directors | Now, a non-executive director including an independent director may receive remuneration, if a company has no profits or inadequate profits in accordance with Schedule V of the Act. Companies will now be able to pay remuneration to Non-Executive Directors and Independent Directors in case of loss or inadequate profits under Schedule V as applicable to Executive Directors earlier. |

| Section 40 | **Section 197-** Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits | |

**Amendments related to ‘Winding Up’**

| Section 46 | **Section 284-** Promoters, directors, etc., to cooperate with Company Liquidator | It provides that when a person required to assist a Company Liquidator does not do so, then the Company Liquidator may make an application to NCLT for necessary directions. Further, it provides that NCLT may direct such person to comply with the directions of the Company Liquidator and to cooperate with him in discharging his functions and duties. |

| Section 47 | **Section 302-** Dissolution of company by Tribunal | Sub-section (3) has been substituted to provide that NCLT shall forward a copy of the order of dissolution to the Registrar, and direct the Company Liquidator to also forward such copy to the Registrar, who shall record in the register relating to the company a minute of the dissolution of the company. |

| Section 50 | **Section 348-** Company Liquidator to deposit monies into scheduled bank | Sub-section (6) has been substituted to provide that if a Company Liquidator, who is an Insolvency Professional, is in default in complying with the provisions of the section, the default will be deemed to be a contravention of the IBC, 2016 and the rules and regulations made thereunder. |
B. Brief Amendments in Companies Act, 2013 by way of Companies (Amendment) Act, 2020 with respect to Decriminalization:

1. Brief legislative background of CAB 2020

CAB 2020 has its genesis in the recommendations made by a committee headed by Mr. Injeti Srinivas (Secretary, MCA) under the Company Law Committee Report published on November 18, 2019 (the "Law Committee Report"). In respect of decriminalization of the Act, the Law Committee Report's mandate was limited to compoundable offences and excluded offences related to serious fraud, public interest, and non-compoundable offences. Therefore, CAB 2020 focuses on prescribing an amended framework in respect of the penalties attached to such compoundable offences under the Act.

2. The basis for decriminalization and consequent amendments proposed under CAB 2020

The principle underlying the amendments proposed by CAB 2020 is essentially a test of objective determination versus subjective assessment. In other words, in cases of civil wrongs, i.e., an offence arising from procedural errors or technical lapses, the determination of default is objective in nature, is devoid of any element of fraud or conflict with public interest, and therefore does not merit prolonged adjudication. The Law Committee Report noted that in case of civil wrongs, the wrongful action is bereft of any intention to cause harm, i.e., mens rea, which is the predominant element in a criminal action. On the basis of the foregoing principle, CAB 2020 has proposed that offences which relate to violation of a well enunciated legal principle that can be assessed by a prima facie objective evaluation be re-categorized as civil offences (rather than being criminal actions) under the Act and default thereof be rectified by payment of a prescribed penalty.

The amendments proposed by CAB 2020 to the Act in respect of decriminalization of compoundable offences can be placed into 3 (three) broad categories: (a) deletion of a charging provision imposing criminal penalty; (b) removal of punishment of imprisonment prescribed for an offence and its re-categorization as a civil wrong punishable only with a fine; and (c) rationalization of the amount of fines currently prescribed under the Act.

2.1 Omission of criminal offences from the Act:

The Law Committee Report, highlighted the challenges created by multiplicity of laws in India and suggested that where an offence under the Act is also dealt under another specialized legislation such offence may altogether be omitted from the Act. The Law Committee Report recommended the removal of defaults which fall within NCLT's purview and could be resolved by the NCLT's appellate or contempt jurisdiction.

Accordingly, CAB 2020 has proposed omission of 9 (nine) offences which relate to non-compliance with orders of the NCLT, i.e., matters relating to winding-up of companies, default in publication of NCLT order relating to reduction of share capital, rectification of registers of security holders, variation of rights of shareholders and payment of interest and redemption of debentures. Further, in relation to default by the company liquidator in matters relating to conduct of liquidation proceedings, CAB 2020 has proposed that such non-compliance of the Act be resolved in accordance with the Insolvency and Bankruptcy Code, 2016 ("IBC"). This amendment is aimed at consolidating the procedural matters relating to liquidation of companies under the IBC which has emerged as a comprehensive code in the matters of winding-up and liquidation.
2.2 Omission of imprisonment and re-categorization of offences:

CAB 2020 proposes to omit the punishment of imprisonment in relation to 23 (twenty three) compoundable offences. The nature of monetary levy in each of these offences has been changed from a criminal 'fine' to a civil 'penalty'.

Keeping in view the gravity of offences, a commensurate increase in the amount of penalty has been proposed for 3 (three) offences where the punishment of imprisonment is proposed to be omitted. These offences relate to non-compliances with provisions relating to contribution towards the corporate social responsibility ("CSR") fund, related party transactions, and defaults in submission of material data or statistics to the central government.

These amendments are in furtherance of the objective of CAB 2020 to eliminate subjectivity in the adjudication process - which exists in such cases because the Act provides the adjudicating officer with the power to order either a punishment of imprisonment or impose a criminal fine, or both. Furthermore, the Act does not fix the sum of penalty upfront; instead the adjudicating officer has the discretion to choose from a monetary range (minimum - maximum) prescribed under the Act.

Additionally, in an important move to reduce criminal actions arising from procedural non-compliances, 5 (five) offences which relate to delay in filing with the RoC or where default is discoverable by way of reviewing the company's record or the MCA's centralized online repository, have also been proposed to be moved to a system of monetary civil penalty only.

2.3 Rationalization of amount of fines:

CAB 2020 proposes to reduce the quantum of monetary penalty associated with 22 (twenty two) offences. The nature of the monetary levy in each of these cases is also proposed to be changed from a criminal 'fine' to a civil 'penalty'. This category of amendment is aimed at matters relating to maintenance of records by the companies such as, inter alia, failure to notify the RoC of alteration of share capital, non-compliance with the procedural requirements for transfer of securities, failure to maintain registers of members, debenture-holders and other security holders, non-compliance in filing of annual return, failure in filing certain resolutions and agreements with the RoC, etc.

3. Decriminalization under key provisions of the Act:

Set out below is a brief overview of the amendments proposed by CAB 2020 to penalties currently prescribed for defaults/non-compliances in relation to the following matters under the Act:

3.1 Public offer and offer document:

CAB 2020 proposes to omit the punishment of imprisonment prescribed under Sections 26(9) and 40(5) of the Act in relation to contravention of provisions relating to public offering of securities by a company, which include, inter alia, matters to be stated in the prospectus and separate treatment of application money received pursuant to a public offer. However, the quantum of the monetary penalty under each of these provisions remains unchanged.

Note that the amendment proposed under CAB 2020 in this area will not dilute the risk of non-compliance in respect of the above-mentioned matters in so far as they can be treated as fraud under the Act. In addition, the penalties prescribed under the rules and regulations framed by the Securities and Exchange Board of India ("SEBI") for any non-compliance with the above-mentioned matters, may also get attracted.
3.2 Buy-back of securities:

CAB 2020 proposes to omit the punishment of imprisonment prescribed in Section 68(11) of the Act for non-compliance with procedure for buy-back prescribed under Section 68 of the Act, the rules framed thereunder and the SEBI (Buy-Back of Securities) Regulations, 2018. Both the defaulting company and the officer-in-default continue to remain liable for a monetary penalty between INR 100,000/- to INR 300,000/- for any non-compliance in respect of the manner of conducting a buy-back.

3.3 Significant beneficial owners:

Section 90(10) of the Act provides for imprisonment as the punishment for a significant beneficial owner(s) of an Indian company (a "SBO"), who fails to make a timely disclosure of his interests to the company. CAB 2020 proposes not only to omit the punishment of imprisonment for such SBO, but also rationalize the quantum of monetary penalty. While the existing initial penalty of INR 10 Million is proposed to be substantially reduced to INR 50,000/- the penalty for each day when the default continues is proposed to be reduced from INR 10,000/- to INR 1,000/- (subject to a maximum of INR 200,000/-).

Under Section 90(4) of the Act, the Companies are also required to file the details received from their SBO with the RoC, and failure to do so within the stipulated timeline could attract penalty extending up to INR 5 Million for both the company and the officer-in-default. CAB 2020 has proposed the reduction of the quantum in this penalty such that: (i) the penalty for the defaulting company is capped at INR 100,000/- and INR 500/- (subject to a maximum of INR 500,000/-) for each day when the default continues; and (ii) the penalty for the officer-in-default is capped at INR 250,000/- and INR 200/- (subject to a maximum of INR 100,000/-) for each day when the default continues.

The above-mentioned proposed amendments indicate that CAB 2020 has distinguished between the liability of a company and its officers, and duly recognized that the financial liability of an officer-in-default should be less than that of the company.

3.4 Financial statements of companies:

CAB 2020 proposes to omit the punishment of imprisonment prescribed in Section 134(8) of the Act for contravention of the provisions relating to preparing and approving financial statements, the auditor’s report and the board report. Further, the monetary penalty under this provision has been proposed to be reduced from INR 2.5 Million to INR 300,000/- for defaulting companies, and from INR 500,000 to INR 50,000/- for the officer-in-default, i.e., almost 1/10th of the existing penalty.

Furthermore, the penalty in Section 137(3) of the Act for a delay in filing the financial statement with the RoC has been proposed for rationalization. The penalty for defaulting companies is proposed to be reduced from a maximum of INR 10 Million to INR 200,000/- and from a maximum of INR 600,000/- to INR 60,000/- for the officer-in-default.
3.5 Corporate social responsibility (Section 135 of Companies Act, 2013):

CAB 2020 has proposed to replace the fixed monetary penalty with an ad-valorem penalty, the quantum of which is connected to the company's minimum CSR spend obligations. Therefore, a company's risk liability in this matter may either increase or decrease depending upon its profitability in a particular financial year.

CAB 2020 has proposed that: (i) in case of defaulting companies, the maximum penalty should be either twice the amount required to be transferred by the company to the CSR Fund, or INR 10 Million; and (ii) in case of the officers-in-default, the maximum penalty should be one-tenth of the amount required to be transferred by the company to the CSR, or INR 200,000/-, in each case, whichever is lesser. CAB 2020 has also classified the nature of such fine as civil penalty.

3.6 Appointment and qualification of directors:

CAB 2020 proposes to omit the punishment of imprisonment prescribed under Section 167(2) of the Act in respect of a director who continues to hold office despite being disqualified from it and the office being declared vacant. While the Act allowed for the monetary penalty to be as low as INR 100,000/-, CAB 2020 has proposed to fix the penalty at the higher amount of INR 500,000/-. CAB 2020 has also proposed to reduce the quantum of per day penalty from INR 5,000/- to INR 2,000 if there is a default committed by a person in holding more than the maximum permissible directorships in companies in India (i.e., 20) in accordance with Section 165(1) of the Act.

3.7 Related party transactions:

CAB 2020 proposes to omit the punishment of imprisonment extending to a period of 1 (one) year, in the event a listed company enters into a related party transaction in contravention of Section 188 of the Act. The Act did not prescribe the punishment of imprisonment in case of such contravention by unlisted companies.

However, given the sensitivity of the offence, the quantum of the fine in case of listed companies is proposed to be increased five-fold i.e., from INR 500,000 to INR 2.5 Million. In case of unlisted companies, the lower range of penalty, i.e., INR 25,000/-, has been removed and the penalty has been proposed to be fixed at INR 500,000/-. 

3.8 Oppression and mismanagement:

CAB 2020 proposes to omit the punishment of imprisonment for a period of up to 6 (six) months currently prescribed under Sections 242(8) and 243(2) of the Act for matters relating to: (i) amendment of its constitutive documents by a company in contravention of an order of the NCLT; and (ii) a director or officer-in-charge who continues to hold office in a company in contravention of an order of the NCLT, respectively.

However, in each of the above cases, the monetary penalty for the officer-in-default is proposed to be fixed at INR 100,000/- (thereby eliminating the lower threshold of INR 25,000/-), and INR 500,000/-, respectively. The penalty for defaulting companies remains unaltered.
Benefits available for introduction of Companies (Amendment) Act, 2020:-

1. It is hoped that the corporate will comply with the requirement of various sections of Companies Act, 2013 with the latest amendment.

2. It is the intention of the Government to require the Corporate Sector to be compliant in all respects of Companies Act, Rules & Regulations.

3. Decriminalisation of certain penalties (as introduced in this Amendment Act) will help in to reduce time, energy, efforts, etc in attending the Offices of the MCA / NCLT / NCLAT in unnecessary litigations.

4. The amendments will further facilitate in “ease of doing business” for the corporate sector in the long run and this will in turn to help in wooing the foreign investors to invest in Indian Corporate sectors. This will increase the business opportunities as well as employment level in India.

5. Co-incidentally the Government has introduced the Companies Fresh Start Scheme, 2020, the last date of which has been extended to 31.12.2020. This date has been extended twice from 30th September, 2020 to 30th November, 2020, and now to 31.12.2020. The Government is very much eager to ask / require the Corporate Sector to be compliant in every respect as this will increase the image of the corporate sector in the minds of all stakeholders in general & Investors in particular.

Role of Company Secretary:-

The role of the Company Secretary in the implementation in the various Sections of the amended Companies Act as applicable to the company is immense as Practicing CS is required to certify that the compliance in this regard is done by the respondent company while certifying MR-3 with ROC at the end of Financial Year.

In the case of employee Company Secretary, he / she is required to guide the company to correctly interpret the Provisions of sections of the Companies (Amendment) Act, 2020, and then help the Management in implementing the same in the concerned company. There shall be additional burden on employee Company Secretary to take the benefit of the decriminalization of penalties levied on companies by complying with such amended provisions.

Conclusion: -

Undoubtedly, the changes proposed by CAB 2020 have the potential of conferring long term benefits on stakeholders and investors by facilitating ease of doing business and providing a swifter redressal and enforcement mechanism for corporate non-compliances in India. In addition, decriminalization of offences under the Act is likely to yield intangible benefits in form of protection of goodwill of a company that could otherwise get tarnished by criminal sanctions being imposed for minor, technical or inadvertent lapses. As the Law Committee Report aptly observed, while criminal sanctions are more grievous and permanent in nature, the cost of civil penalties may be absorbed as part of running a business in the ordinary course.

However, precaution is required to be taken by the Government in introducing decriminalization of certain offences under the Act as it could turn it into a toothless tiger which may fail to seek adequate and necessary compliance by the companies even in relation to matters of grave importance. Further it should not be taken for granted by the corporate sector i.e. to say it should not be made the practice to waive the penalties for the default by introducing such scheme after every 2 to 3 years.

Another concern which is worth deliberating upon is if the decriminalization proposed by CAB 2020 will have the effect of encouraging an unbridled corporate culture of purging defaults by merely expending funds, thereby defeating the legislative intent with which CAB 2020 was introduced.
An example of the dichotomy being created by CAB 2020 can be seen in the matter of the burden of compliance that is currently placed upon directors, key managerial personnel and officers of the company under the Act and the consequences that such officer(s) may have to deal with (in their personal capacity) if their obligations are not discharged in the form and substance envisaged by the Act.

CAB 2020 has proposed to reduce the penalty which can be imposed by the Act upon the officer-in-default of the company in various instances. However this should not be construed to take lenient view by the corporate sector in complying with the Sections of the Act / Rules. Assuming that CAB 2020 is notified in its current form, the relaxations could potentially encourage executive officers to take an active part and bring their expertise in day-to-day operational matters of companies without bearing the risk of being exposed to criminal prosecution for actions taken in good faith. In short, decriminalization of offences and rationalization of their personal pecuniary liability should not be seen as a less vigilant approach in maintaining compliances of the company.

It is peculiar that CAB 2020 has been proposed less than a year after CAA 2019 was notified. Both these legislations are propelled by similar objectives and seek to amend overlapping matters. The short time period which has elapsed between enactment of CAA 2019 and introduction of CAB 2020 seems inadequate for the effects (either intended or inadvertent) of legislative changes to corporate laws to percolate down the line to the intended beneficiaries i.e., the corporate entities. While it would take some time for companies to reap the benefits of the amendments relating to decriminalization of offences and re-categorization of penalties proposed under CAB 2020, the balance which is critical to attain the overall objectives of the Act itself, must not be lost.

The Government of India is concentrating on creating friendly business environment for the investors as well as for all the stakeholders. For that purpose, it has started to take every possible step so that business opportunities will increase thereby investments & employment level. It has also now alter its Foreign Trade Policy with effect from 15.10.2020 & wherein the investors have been asked to invest their funds in the sectors in India. The Companies (Amendment) Act, 2020 is the step towards this aim of the Government.

******
The Companies (Amendment) Act, 2020 : An Act further to amend the Companies Act, 2013 got the assent of Hon’ble President as on 28th September, 2020.

There are amendments in 61 sections in the Act and 4 sections have been newly inserted which includes the provisions for Producer Companies.

Decriminalisation of various penal provisions based on their gravity, under the Companies Law, being main feature of the said Act, will help various small companies by reducing the litigation burden on them providing greater ease of living in current times.

Introduction of provisions for Producer Company in Companies Act, 2013 is another main feature of the Amendment.

Amendment can be broadly divided into to following 4 criteria :
- Removal of punishment of Imprisonment;
- Any type of Penalty has been omitted;
- Substitution of imprisonment with monetary penalty;
- Reduction of Penalty.

<table>
<thead>
<tr>
<th>1.</th>
<th>Sectio n No.</th>
<th>COMPANIES ACT, 2013</th>
<th>AMENDMENT INTRODUCED TO EXISTING PROVISION</th>
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<tbody>
<tr>
<td>2.</td>
<td>2(52)</td>
<td>Definition of Listed Companies</td>
<td>“listed company” means a company which has any of its securities listed on any recognised stock exchange. Amendment provides for exclusion of such companies issuing specified classes of securities from the definition of listed companies. The objective is to exclude such private companies providing flexibility that list their debt securities on a recognized stock exchange upon their allotment on private placement basis but not shares.</td>
</tr>
<tr>
<td>3.</td>
<td>8(11)</td>
<td>Formation of Companies with Charitable Objects</td>
<td>Removed punishment of Imprisonment.</td>
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CS Nisha K. Gidwani
Nisha & Associates
csnishaassociates@gmail.com
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<th>No.</th>
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<td>26(9)</td>
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<td>40(5)</td>
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<td>48(5)</td>
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<td>56(6)</td>
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<td>59(5)</td>
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<td>86(1)</td>
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<td>20</td>
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<td>21</td>
<td>105(3)</td>
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<td>23</td>
<td>124(7)</td>
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<td>24</td>
<td>128(6)</td>
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<td>25</td>
<td>129A (NEW)</td>
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| 26. | 134(8) | Financial Statement, Board’s Report, etc. | Removed punishment of Imprisonment.  
Fixed monetary penalty of Rs. 3,00,000/- (Company) and Rs. 50,000/- (Officer in Default). |
| 27. | 135(5) (7) & (9) | Corporate Social Responsibility (CSR) | Companies with a CSR liability of up to Rs 50 lakhs a year are exempted from setting up CSR Committees and the Board of Directors shall exercise the functions of a CSRC.  
Further, the amount in excess of their CSR obligation spend by the companies in a financial year can be set off in subsequent financial years.  
Penalty for default in the transfer of unspent money to the respective funds: twice the amount needed to be transferred or Rs. 1 Crore, whichever is less (Company) and 1/10th the amount necessary to be transferred to the respective funds of Rs. 2,00,000/-, whichever is less (Officer in Default). |
| 28. | 137(3) | Copy of Financial Statement to be filed with Registrar | If a company fails to file financial statements before the specified period therein –  
Penalty is fixed at Rs. 10,000/- and reduced continuing penalty in case of continuing default of Rs. 1000/ day to Rs. 100/day and total penalty from Rs. 10,00,000/- to Rs. 2,00,000/- (Company) and  
Reduced penalty from Rs. 1,00,000/- to Rs. 10,000/- and reduced maximum penalty of Rs. 5,00,000/- to Rs. 50,000/- (Officer in Default). |
| 29. | 140(3) | Removal, Resignation of Auditor and Giving of Special Notice | If the auditor does not comply with the provisions, the maximum penalty in case of continuing failure is reduced from Rs. 5,00,000/- to Rs. 2,00,000/-. |
| 30. | 143 (15) | Powers and Duties of Auditors and Auditing Standards | The penalty is fixed depending upon the type of Company that is Maximum liability for an auditor has been reduced:  
a) For listed company- from Rs. 25,00,000/- to Rs 5,00,000/-.  
b) For any other company- from Rs. 25,00,000/- to Rs 1,00,000/-. |
| 31. | 147(1) & (2) | Punishment for Contravention | Removed imprisonment for an Auditor contravening provisions of section 139 & 143 to 145.  
Further Punishment of Section 143 has been provided in Section 143 itself, therefore, it has been omitted in Section 147. |
<p>| 32. | 149(9) | Remuneration of Independent Director | The new provision provides that the Independent Director may receive remuneration in case of no profits or inadequate profits as per Schedule-V. |
| 33. | 165(6) | Number of Directorship | If a person accepts directorship in violation, penalty is reduced from Rs. 5000/- to Rs. 2000/day and maximum limit fixed at Rs. 2,00,000/-. |
| 34. | 167(2) | Vacation of Office of Director | Removed punishment of Imprisonment. |
| 35. | 172 | Punishment: Appointment and Qualification of Directors | If specific penalty not provided then in case of continuing failure then penalty of Rs. 500/day and further reduced maximum penalty from Rs. 5,00,000/- to Rs. 3,00,000/- (Company) and Rs. 1,00,000/- (Officer in Default). |
| 36. | 178(8) | Nomination &amp; Remuneration Committee and Stakeholder Relationship Committee. | Removed punishment of Imprisonment. Fixed maximum penalty of Rs. 5,00,000/- (Company) and Rs. 1,00,000/- (Officer in Default). |
| 37. | 184(4) | Disclosure of Interest by Director | Removed punishment of Imprisonment. |
| 38. | 187(4) | Investment by Company to be held in its own name | Removed punishment of Imprisonment. Fixed maximum penalty of Rs. 5,00,000/- (Company) and Rs. 50,000/- (Officer in Default). |
| 39. | 188(5) (i) &amp; (ii) | Related Party Transactions | Removed punishment of Imprisonment. Increased the amount of penalty from Rs. 5,00,000/- to Rs. 25,00,000/- in case of listed company and fixed penalty of Rs. 5,00,000/- in case of any other company if any contract or arrangement is entered into or authorised in violation of the Act. |
| 40. | 197(3) | Overall maximum managerial remuneration and in case of absence or inadequate profits | Removed punishment of Imprisonment. |
| 41. | 204(4) | Secretarial Audit | Reduced the penalty from Rs. 5,00,000/- to Rs. 2,00,000/- |
| 42. | 232(8) | Merger and Amalgamation of Companies | Removed punishment of Imprisonment. Uniformed the penalty for company and officer in default to Rs. 25,000/- and if in case of continuing failure of Rs. 1000/day subject to maximum of Rs. 3,00,000/- . |
| 43. | 242(8) | Powers of Tribunal | Removed punishment of Imprisonment. |
| 44. | 243(2) | Consequences of termination and modification of certain agreements | Removed punishment of Imprisonment. |
| 45. | 247(3) | Valuation by Registered Valuer | Reduced penalty from Rs. 1,00,000/- to fixed Rs. 50,000/- . |
| 46. | 284(2) | Promoters, Directors, etc to co-operate with Company Liquidator | Removed punishment of Imprisonment. If the person appointed to assist the Company Liquidator does not assist then the Company Liquidator may make an application to the Tribunal for necessary directions. To provide that the Tribunal may direct such person to comply with the directions of the Company Liquidator. |
| 47. | 302(2) &amp; (4) | Dissolution of Company by Tribunal | To provide that the copy of the Order of dissolution shall be forwarded by Tribunal to Registrar within 30 days and Tribunal will also direct the company liquidator to send the order to Registrar who shall record the same in register. Removed penalty for Company Liquidator. |
| 48. | 342(6) | Prosecution of Delinquent Officers and Members of Company | Penalty removed. |
| 49. | 347(4) | Disposal of Books and Papers of Company | Removed punishment of Imprisonment. |</p>
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<tr>
<td>50.</td>
<td>348(6) &amp; (7)</td>
<td>Information as of pending litigation</td>
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<td>Removed penalty for Company Liquidator.</td>
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<td>Its provides that Company Liquidator, who is an insolvency professional registered under the Insolvency and Bankruptcy Code, 2016 is in default in complying with the provisions of this section, 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.</td>
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<td>51.</td>
<td>356(2)</td>
<td>Powers of Tribunal to Declare Dissolution of Company Void</td>
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<td>To provide that the copy of the Order of dissolution will be forwarded by tribunal to Registrar who shall record the same within 30 days and tribunal will also direct the company liquidator to file certified copy of the order to Registrar who shall record the same within 30 days or such period as may be allowed by Tribunal.</td>
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<td>52.</td>
<td>378A to 378ZU (NEW)</td>
<td>Chapter XXIA Producer Company</td>
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<td>To insert a new Chapter as Chapter XXIA relating to Producer Companies on similar lines as provided in the Companies Act, 1956</td>
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<td>53.</td>
<td>379(1)</td>
<td>Application of Act to Foreign Companies</td>
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<td>Omitted the provision whereby CG may exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393.</td>
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<td>54.</td>
<td>392</td>
<td>Punishment for Contravention</td>
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<td>Removed punishment of Imprisonment.</td>
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<td>55.</td>
<td>393A (NEW)</td>
<td>Exemption Under This Chapter – Newly inserted</td>
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<td>To empower CG to exempt any class of (a) foreign companies (b) companies incorporated or to be incorporated outside India, from any of the provisions of this Chapter by notification to be laid before both Houses of Parliament.</td>
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<td>56.</td>
<td>403(1)</td>
<td>Fee for filling etc.</td>
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<td>To provide that where there is default on two or more occasions in submitting, filing, registering or recording of prescribed documents, on payment of such higher prescribed additional fees.</td>
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<td>57.</td>
<td>405(4)</td>
<td>Power of Central Government to Direct Companies to Furnish Information or Statistics</td>
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<td></td>
<td></td>
<td>Removed punishment of Imprisonment.</td>
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<td>To provide for monetary penalty of Rs. 20,000/- and in case of continuing failure Rs. 1000/day and fixed a maximum penalty of Rs. 3,00,000/- in case a company fails to comply with an Order or furnishes any incorrect or incomplete material information or statistics.</td>
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<td>58.</td>
<td>410</td>
<td>Constitution of Appellate Tribunal</td>
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<td>Removal of restriction provided on number of Judicial and Technical members that the CG may appoint in the NCLAT.</td>
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| 59. | 418A (NEW) | Benches of Appellate Tribunal – Newly inserted | To provide for constitution of NCLAT Benches.  

The NCLAT powers may be exercised by the Benches having at least one Judicial Member and one Technical Member, sitting ordinarily at New Delhi or such other places as the CG may, in consultation with the Chairperson, notify.

Further, it may establish such number of Benches, as it may consider necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016 by notification, after consultation with the Chairperson. |
| 60. | 435(1) | Establishment of Special Courts | To provide that the offence u/s 452 shall be excluded for speedy trial of offences, the CG may establish Special Courts. |
| 61. | 441(5) | Compounding of Certain Offences | Removed punishment of Imprisonment.  

If any officer/employee of the company fails to comply with Tribunal/Regional Director/authorized officer, the maximum amount of fine for the offence proposed to be compounded under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided. |
| 62. | 446B | Lesser Penalties for certain Companies | To provide for lesser monetary penalty of 1/2 of the penalty specified in such provision subject to a maximum of Rs. 2,00,000/- (Company) and Rs. 1,00,000/- (Officer in Default) for One Person Company, small companies, start-up company or Producer Company, or by any of its officer in default, or any other person. |
| 63. | 450 | Punishment where no specific Penalty or Punishment is provided | To provide for fixed maximum penalty of Rs. 2,00,000/- (Company) and Rs. 50,000/- (Officer in Default). |
| 64. | 452(2) | Punishment for wrongful withholding of Property | To provide that the imprisonment of such officer/employee shall not be ordered for wrongful possession or withholding of a dwelling unit, if the court is satisfied that the company has not paid statutory dues to that officer/employee, that is any amount relating to— (a) provident fund, pension fund, gratuity fund or any other fund for the welfare of its officers or employees, maintained by the company; (b) Compensation or liability for compensation under the Workmen’s Compensation Act, 1923 in respect of death or disablement. |
| 65. | 454(3) | Adjudication of Penalties | To provide for no monetary penalty if default relating to sections 92 (4) or 137 (1) or (2) is made good and rectified either before or within 30 days of issue of Notice. |
| 66. | 465(1) | First Proviso Repeal of certain Enactments and Savings | As new Chapter XXIA have been introduced in Companies Act, 2013 for Producer Companies, this provision is Omitted. |

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COMPANIES AMENDMENT ACT- A NEW BEGINNING

Background

The Ministry of Corporate Affairs (MCA) constituted a Company Law Committee (CLC) to review sections on offences under the Companies Act, 2013 (2013 Act). The CLC contemplated on various matters in addition to review of offences under the 2013 Act i.e. introducing a mechanism to reduce burden on courts and for effective disposal of cases, simplifying compliances, repealing the redundant provisions of the Act, improving functioning of authorities under the 2013 Act and changes aimed at promoting the ease of conducting business in India.

CLC submitted its report to MCA, recommending changes in the 2013 Act on 14th November 2019.

In the press briefing done by Hon’ble Finance Minister, special emphasis was laid down on decriminalisation provisions under the companies law, which would also help small companies by reducing the litigation burden on them.

Journey of the Act

The Amendment Act was passed by the Lok Sabha on 19th September, 2020 and by the Rajya Sabha on 22nd September, 2020. The assent of the President was received on Sept 28, 2020 to the Amendment Act.

Arrangement of Sections

There are amendments in 61 sections in the Act and a new Chapter XXIA has been newly inserted which includes the provisions for Producer Companies.

Overview

Major thrust of the Amendment Act is decriminalisation of more than 48 offences under the Companies Act, 2013 and lightening rigour of penalties. Besides relaxation of CSR law so that smaller companies with lesser CSR obligations are not required to constitute CSR committee and excess spending on CSR in a particular year could be used for subsequent years., remuneration to non-executive directors in case of inadequate profits, addition of separate chapter relating to producer companies, periodic financial results by non-listed companies, has been provided.

In order to support the startup eco-system in India, the amendments allow direct listing in foreign jurisdiction, which will give the companies wider access to the Investors and will provide quicker exit to existing stakeholders.
The change bought by this Bill enables payment of remuneration to Non Executive and Independent Director even in case of inadequate profits, thereby aligning it with existing provisions applicable to Executive Directors.

To boost transparency certain specified classes of unlisted companies are now required to prepare and file their periodical financial results also as opposed to only annual financial results currently.

The above-mentioned amendments are a step in the right direction which will boost the morale of the Corporate Sector, especially in these distressed times, and would contribute towards improving India’s rankings globally in Ease of Doing Business.

Section wise analysis of amendments

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<th>IMPACT /OUR VIEWS</th>
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<td>CHAPTER I Section 2(52)</td>
<td>Private Companies whose debt is listed on stock exchanges will be exempt from compliance of listed companies.</td>
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<td>Definition of Listed Company</td>
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<td>2</td>
<td>CHAPTER II Section 8(11)</td>
<td>Punishment of imprisonment of three years is removed.</td>
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<td>Formation of Companies with Charitable Objects:</td>
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<td>3</td>
<td>CHAPTER II Section 16(1)(b) &amp; 16(3)</td>
<td>The time limit of compliance of direction given by the Central Government to change the name of company has been reduced from 6 months to 3 month. The Central Government has been empowered to allot a new name to the company, in case of default in complying with its direction instead of imposing punishment for non-compliance for such default. The company is however not prevented from subsequently changing its name</td>
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<td></td>
<td>Rectification of Name of Company</td>
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<td>4</td>
<td>CHAPTER III Section 23 (3) and (4)</td>
<td>Much awaited move to allow certain public companies to list their securities on foreign stock exchanges located outside India allowing access to global investors. These companies shall be exempt from requirements of the Act relating to share capital, Declaration &amp; Investigation of Beneficial interest, punishment for non declaration of Dividend among others.</td>
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<td>Public Offer and Private Placement</td>
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<td>5</td>
<td>CHAPTER III Section 26 (9)</td>
<td>Punishment of imprisonment is deleted.</td>
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<td>Matters to be Stated in Prospectus</td>
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<td>6</td>
<td>CHAPTER III Section 40 (5)</td>
<td>Punishment of imprisonment in case of any default is removed.</td>
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<td>Securities to be Dealt with in Stock Exchanges</td>
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<td>Transfer and Transmission of Securities</td>
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<td>89(5) (7)</td>
<td>Declaration in Respect of Beneficial Interest in any Share</td>
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<td>18</td>
<td>CHAPTER VII Section 90(10) Investigation of significant beneficial ownership of shares in certain cases.</td>
<td>Reduced penalty from Rs. 1,00,000-10,00,000/- to Rs. 50,000/-, 1000/- per day for continuing offence. Maximum limit has been inserted for amount of Rs. 2,00,000/-.</td>
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</table>
| 19 | CHAPTER VII Section-92(5)&(6) Annual Return | Reduced penalty from Rs.50,000/- to Rs. 10,000/-
And in case of continuous default also penalty reduced from Rs. 5,00,000/- to Rs. 2,00,000/-. For Practising Company Secretary fixed penalty of 2,00,000/- is substituted. |
| 20 | CHAPTER VII Section-105(5) Proxies | Reduced penalty from Rs. 1,00,000/- to Rs. 50,000/-. |
| 21 | CHAPTER VII Section-117(2) & (3) Resolutions and Agreements to be filed | Reduced penalty from Rs. 1,00,000/- to Rs. 10,000/- and in case of continuing default from Rs.500/- to Rs. 100/- per day. Subject to maximum from Rs.25,00,000 to Rs. 2,00,000/-. Officer in Default including liquidator penalty reduced from Rs 50,000/- to Rs 10,000/-. In case of continuing offence further penalty reduced from Rs 500/- to Rs 100/- per day subject to maximum of Rs. 50,000/-. The Central Government is empowered to exempt any class of NBFCs and any class of HFCs from filing of resolutions passed to grant loans or give guarantees or to provide security in respect of loans in the ordinary course of their business. Earlier, only Banking Companies were exempted. |

Second proviso in Section 117(3)(g)
| 22 | CHAPTER VIII Section-124(7) Unpaid Dividend | Reduced minimum penalty of Rs. 5,00,000/- to Rs. 1,00,000/-
For continuing default penalty reduced from Rs. 25,00,000/- to Rs. 10,00,000/-.
(Rs 500/- each day subject to maximum Rs 10,00,000/-)
For officer in default penalty of 25,000/-
For continuing default further penalty of (Rs100/- each day subject to maximum Rs 2,00,000/-) |
| 23 | CHAPTER IX Section-128(6) Books of Account | Imprisonment provision is removed. |
| 24 | CHAPTER IX Section 129A Financial Statement | To ensure greater transparency, the Central Government is empowered to specify the class of companies who will be required to prepare their financials on periodical basis. |
| 25 | CHAPTER IX Section 134(8) Financial Statement, Board’s Report, etc. | Penalty has been reduced from Rs 25,00,000/- to Rs 3,00,000/- and in case of officer in default removed the imprisonment and reduced penalty from Rs 5,00,000/- penalty to Rs 50,000/- |
| 26 | CHAPTER IX- Section-135: Corporate Social Responsibility Section 135(7) | Now, the companies, which spend an amount in excess of the requirement of 2%, will be allowed to set off such excess amount out of their obligation in the succeeding financial years after complying with the prescribed rules.

Penalty for non-spending of CSR Funds or transfer of unspent funds to special account made to twice the amount that was required to be transferred to special account, maximum of One Crores from 50,000/- to 25,00,000/-,

Imprisonment for Officer in default removed and penalty changed from Rs 50,000/- to Rs 500,000/- to one tenth of the amount required to be deposited in the special account

Requirement of CSR committee removed in case the amount required to be spent on CSR does not exceed Rs. 50 lakhs.

Functions of committee to be discharged by the Board of directors.

Ease of compliance for corporate where CSR amount spent is not significant. |
| 27 | CHAPTER IX Section-137(3): Copy of Financial Statement to be filed with registrar | Reduced continuing penalty in case of continuing default of Rs. 1000/- per day to Rs. 100/- per day  
Total penalty from Rs.10,00,000/- to Rs.2,00,000/-.  
Penalty reduced for person responsible to comply from Rs. 1,00,000/- to Rs.10,000/-.
Maximum penalty reduced from Rs. 5,00,000/- to Rs.50,000/- for person responsible to comply. |
| 28 | CHAPTER X- Section 140(3): Removal, resignation of auditor and giving of special notice | Reduced maximum penalty from Rs. 5,00,000/- to Rs.2,00,000/- |
| 29 | CHAPTER X- Section-143(15): Powers and Duties of Auditors | Specified the penalty separately for listed company and other company in case fraud is noticed during the course of audit and Auditor does not report it to Central Government or Audit committee. This step is judicious since listed companies involve public funds. |
| 30 | CHAPTER X- Section-147(1)(2): Punishment for Contravention | Imprisonment removed without any change in penalty.  
Penalty under this section u/s 143 removed. |
| 31 | CHAPTER XI Section-149(9): Remuneration of Independent Director | This proviso allows the Independent Director to take remuneration in case of no profit or inadequate profit as per Schedule-V, thereby aligning it with existing provisions applicable to Executive Directors. |
| 32 | CHAPTER XI Section-165(6): Number of Directorship | Reduced penalty from Rs. 5000/- per day to Rs. 2,000/-  
Maximum limit prescribed for penaltyRs.2,00,000/- |
| 33 | CHAPTER XI Section-167(2): Vacation of Office of Director | Imprisonment removed; penalty amount remains the same |
| 34 | CHAPTER XI Section-172: Punishment | Reduced maximum penalty from Rs. 5,00,000/- to Rs. 3,00,000/- for company and Rs. 1,00,000/- for officer in default. |
| 35 | CHAPTER XII Section-178(8) Nomination & Remuneration Committee and Stakeholder Grievance Committee | Removed imprisonment and penalty fixed at Rs 1,00,000/- for Officer in Default and Rs 500,000/- for company. |
| 36 | CHAPTER XII Section-184(4): Disclosure of Interest by Director | Imprisonment removed, penalty remains the same. |
| 37 | CHAPTER XII Section-187(4) Investment by company to be held on its own name |
| 38 | CHAPTER XII Section-188(5) Related Party Transactions |
| 39 | CHAPTER XIII Section-197: Overall maximum managerial rem and mgr. rem. In case of absence or inadequate profits |
| 40 | CHAPTER XIII Section-204(4): Secretarial Audit |
| 41 | CHAPTER XV Section 232(8): Merger and Amalgamation of Companies |
| 42 | CHAPTER XVI Section-242(8): Powers of Tribunal |
| 43 | CHAPTER XVI Section-243(2): Consequence of termination or modification of certain agreements. |
| 44 | CHAPTER XVII Section-247(3): Valuation by registered valuer |
| 45 | CHAPTER XX Section-284(2)(3): Promoters, directors etc to cooperate with company liquidator |

**CHAPTER XII Section-187(4)**
Investment by company to be held on its own name

Imprisonment removed.
Penalty reduced from Rs. 25,00,000/- to Rs. 5,00,000/- in case of company and from Rs. 1,00,000/- to Rs. 50,000/- in case of officer in default.

**CHAPTER XII Section-188(5)**
Related Party Transactions

Removed imprisonment

Increased the amount of penalty from Rs. 5,00,000/- to Rs. 25,00,000/- in case of listed co.

In case of any other Company fixed penalty of 5,00,000/-

Included independent director and any other Non-Executive Director to align with amendment made for payment of remuneration to NEDs and IDs u/s Section 149(9)

Reduced the penalty from Rs.5,00,000/- to Rs.2,00,000/- in case of non compliance of conducting secretarial audit/cooperation with secretarial auditor or explaining the qualifications or remarks made in report.

Removed imprisonment.

Fixed the penalty for company and officer reducing the maximum limit for companies from Rs. 25,00,000/- to Rs. 3,00,000/-. 

Removed imprisonment, fine remains the same.

Removed imprisonment fine remains the same.

Reduced penalty from Rs.1,00,000/- to Rs. 50,000/-.

Removed imprisonment& Fine, addition of clause allowing Liquidator to make application to Tribunal for directions in case of non-cooperation.

Tribunal by order will direct the Company or its Directors to cooperate.
<table>
<thead>
<tr>
<th></th>
<th>CHAPTER XX Section-302(3)(4): Dissolution of company by Tribunal</th>
<th>Now copy of the order of dissolution will be forwarded by tribunal to Registrar and tribunal will also direct the company liquidator to send the order to Registrar. Sub Section (4) omitted, therefore fine removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>47</td>
<td>CHAPTER XX Section-342(6): Prosecution of Delinquent Officers and Members of Company</td>
<td>Penalty provision omitted.</td>
</tr>
<tr>
<td>48</td>
<td>CHAPTER XX Section-347(4): Disposal of Books and Papers of Company</td>
<td>Removed imprisonment and penalty remains the same.</td>
</tr>
<tr>
<td>49</td>
<td>CHAPTER XX Section-348(6)(7): Information as of pending litigation</td>
<td>Removal of penalty but provisions added that non compliance to be treated as under the Code Sub section deleted since amended (6) already covers non compliance of this Section</td>
</tr>
<tr>
<td>50</td>
<td>CHAPTER XX Section-356(2): Powers of Tribunal to Declare Dissolution of Company Void</td>
<td>Sub-section (2) has been substituted to provide that NCLT shall forward a copy of the order to the Registrar, and direct the Company Liquidator or the person on whose application such order was made to also file a certified copy of the order with the Registrar within thirty days of the order. Now copy of the order of dissolution will be forwarded by tribunal to Registrar and tribunal will also direct the company liquidator to send the order to Registrar.</td>
</tr>
<tr>
<td>51</td>
<td>CHAPTER XXIA Section 378 A, 378B to 378ZU Producer Company</td>
<td>New Chapter specifically for producer companies inserted on the lines of Companies Act 1956. Covers process relating to its incorporation, management, general meetings, share capital, accounts and audit, loan to members and investment, amalgamation, merger and division, resolution of disputes, penalties and miscellaneous provisions. It also provides for re-conversion of the Producer Company to the inter-state co-operative society.</td>
</tr>
<tr>
<td>52</td>
<td>CHAPTER XXII Section 379 Companies incorporated outside India</td>
<td>Omitted since a new provision has been inserted to provide the Central Government with power related to granting exemption to foreign companies.</td>
</tr>
<tr>
<td>Page</td>
<td>Section/Provision</td>
<td>Description</td>
</tr>
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</tr>
<tr>
<td>53</td>
<td>CHAPTER XXII Section 392</td>
<td>Punishment for contravention: Imprisonment is omitted</td>
</tr>
<tr>
<td>54</td>
<td>CHAPTER XXII Section 393A</td>
<td>Central Government empowered to exempt any class of foreign companies from any of the provisions of Chapter XXII</td>
</tr>
<tr>
<td>55</td>
<td>CHAPTER XXIV Third proviso to Section 403</td>
<td>It empowers to the Central Govt. to prescribe additional fees</td>
</tr>
<tr>
<td>56</td>
<td>CHAPTER XXV Section 405(4)</td>
<td>Companies to furnish Information and statistics: Company and every officer of the company who is in default shall be liable to a penalty of Rs. 20 thousand and in case of continuing failure, with a further penalty of Rs. 1,000 for each day after the first during which such failure continues, subject to a maximum of Rs. 3 lakh.</td>
</tr>
<tr>
<td>56</td>
<td>CHAPTER XXV Section 405(4)</td>
<td>Companies to furnish Information and statistics: Company and every officer of the company who is in default shall be liable to a penalty of Rs. 20 thousand and in case of continuing failure, with a further penalty of Rs. 1,000 for each day after the first during which such failure continues, subject to a maximum of Rs. 3 lakh.</td>
</tr>
<tr>
<td>56</td>
<td>CHAPTER XXV Section 410</td>
<td>Constitution of Appellate Tribunal: Maximum strength of NCLAT of 11 members removed.</td>
</tr>
<tr>
<td>57</td>
<td>CHAPTER XXVII Section 418A</td>
<td>Benches of Appellate Tribunal: A new section 418A has been inserted to provide for constitution of additional Benches of NCLAT and related provisions.</td>
</tr>
<tr>
<td>58</td>
<td>CHAPTER XXVIII Section 435</td>
<td>Establishment of Special Courts: It provides that the offence under section 452 i.e. punishment for wrongful withholding of property, will be excluded from the applicability of the Special Court.</td>
</tr>
<tr>
<td>59</td>
<td>CHAPTER XXVIII Section 441(5)</td>
<td>Compounding of certain offences: Imprisonment removed. Fine: Maximum- twice the amount provided in the corresponding section in which punishment for such offence is provided.</td>
</tr>
<tr>
<td>60</td>
<td>CHAPTER XXVIII Section 446B</td>
<td>Lesser penalties for One person Companies or small company: Section 446B has been substituted to provide for payment of lesser monetary penalty by a start-up company, Producer Company, One Person Company or small company on failure to comply with provisions of the Act which attract monetary penalties. Producer and Start up company defined</td>
</tr>
<tr>
<td>61</td>
<td>CHAPTER XXIX Section 450</td>
<td>Punishment where no specific penalty or punishment is provided: Maximum Limit of fine fixed for Company of Rs 200,000/- and Officer in default Rs 50,000/-.</td>
</tr>
<tr>
<td>62</td>
<td>CHAPTER XXIX Section 452-(2)</td>
<td>Punishment for wrongful withholding of property: Refund of cash or property wrongfully withheld not to be ordered by the Court if statutory dues are recoverable from the company.</td>
</tr>
</tbody>
</table>
CHAPTER XXIX Section 454(3) Adjudication of Penalties

A window has been provided within which penalties shall not be levied for delay in filing annual return and financial statements in certain cases. It will reduce the chances of monetary penalty being levied where the default is made good within a defined time.

CHAPTER XXIX First, Second and Third proviso to Section 465 Repeal of certain enactments and savings

New chapter introduced for ‘producer companies, therefore omitted. Since first proviso deleted, relevant change made in second and third.

Conclusion

Decriminalisation of offences is indeed a welcome step to declog the judicial system which is need of the hour. Most of the offences which have been decriminalised are procedural and technical in nature. There are more than 4 million cases pending as of now in High Courts and more than 33 million in Taluka and District levels. However, a proper balance needs to be maintained to make corporates accountable and not make the legislation toothless thereby encouraging habitual offenders.

The Decriminalization exercise is not just limited to Companies Act. The Government is revisiting all economic laws to find the statues where criminality can be done away with. This will further strengthen India’s position in terms of ease of doing business and Investor sentiment.

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KEY CHANGES IN COMPANIES AMENDMENT ACT, 2020

Compensation in Penalties

Exemption to “Registered NBFC” from filing certain resolutions

Insertion of New Section 129 A

Right Issue

Insertion of New Chapter for Producer Company

Alteration in “Listed Company” definition

CSR

Auditors

NED Remuneration

AMENDMENTS IN CSR PROVISIONS:-

a) Set Off Of Excess Amount:
   Provision for setting off excess amount against the requirement to be spent under CSR activity for such number of succeeding financial years and in such manner, as may be prescribed.

b) Exemption From Forming CSR Committee:
   Where the amount to be spent by a company for CSR activity does not exceed fifty lakhs rupees, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

c) Penalty For Non Compliance:
   Penalty provision has been inserted for noncompliance of provisions of Corporate Social Responsibility.
REMUNERATION TO DIRECTORS - SECTION 197

Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager or any other non-executive director, including an independent director, by way of remuneration any sum exclusive of any fees payable to directors under sub section (5) hereunder except in accordance with the provisions of Schedule V.

Therefore, even in case of inadequate profits, NED (including ID) remain eligible to receive remuneration from the Company in accordance with Schedule V of Companies Act, 2013.

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AMENDMENTS IN AUDIT & AUDITOR’S PROVISIONS:

<table>
<thead>
<tr>
<th>Section</th>
<th>Old Provision</th>
<th>Amended Provision</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>140 (3)</td>
<td>If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees or the remuneration of the auditor, whichever is less, but which may extend to five lakhs rupees.</td>
<td>If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or 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 lakhs rupees.</td>
<td>Reduction in Penalty</td>
</tr>
<tr>
<td>143 (12)</td>
<td>If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall: (a) in case of a listed company, be liable to a penalty of 25 lakhs rupees; and (b) in case of any other company, be liable to a penalty of 1 lakhs rupees.</td>
<td>If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall: (a) in case of a listed company, be liable to a penalty of 5 lakhs rupees; and (b) in case of any other company, be liable to a penalty of 1 lakhs rupees.</td>
<td>Maximum liability for an auditor has been reduced.</td>
</tr>
</tbody>
</table>
(b) in case of any other company, be liable to a penalty of 25 lakhs rupees.”

| 147 (2) | If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakhs rupees 1[or four times the remuneration of the auditor, whichever is less] |

Punishment of Section 143 has been provided in Section 143 itself.
Therefore, it has been omitted in Section 147.

### AMENDMENTS IN PRODUCER COMPANY PROVISIONS:

Provisions of Producer Company introduced after Section 378 as 378A to 378ZU.

Purpose: To insert a new Chapter as Chapter XXIA relating to Producer Companies on similar lines as provided in the Companies Act, 1956.

### AMENDMENTS IN RIGHT ISSUE PROVISIONS:

The offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days “or such lesser number of days as may be prescribed” and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined.

Purpose: To permit Offer time be lesser than 15 Days.

### AMENDMENTS IN LISTED COMPANY PERVIEW:

The Amendment Act empowers the Centre in consultation with the SEBI, to exclude companies issuing specified classes of securities from the definition of a “listed company”.

Purpose: To exclude Private Companies having their debt securities listed on recognized stock exchanges upon their allotment on private placement basis, thereby falling under the definition of a ‘listed company’ under the Act.

### AMENDMENTS FOR NBFC COMPANIES:

The Act requires companies to file certain resolutions with the Registrar of Companies, which include resolutions of the Board of Directors of the company to borrow money, or grant loans.

However, banking companies are exempt from filing resolutions passed to grant loans or to provide guarantees or security for a loan. This exemption has been extended to registered nonbanking financial companies and housing finance companies.
In sub-section (3), in clause (g), for the second proviso, the following proviso shall be substituted, namely:

“Provided further that nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by;

a) a banking company;

b) any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as may be prescribed in consultation with the Reserve Bank of India;

c) any class of housing finance company registered under the National Housing Bank Act, 1987, as may be prescribed in consultation with the National Housing Bank;”

**AMENDMENT W.R.T REDUCTION IN PENALTY**

Decriminalization of the Companies Act, 2013 is main feature of the Amendment Act. It removes the imprisonment for various offenses, substitute’s fine by penalty in and reduces amount of payable as penalty across the board. In certain minor omissions, etc. penal consequence has been omitted.

One-person companies, small companies, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company or person shall be liable to one-half of the penalty specified and it is subject to a maximum of Rs. 2.00 lakhs in case of a company and Rs. 1.00 lakhs in case of an officer who is in default or any other person.

**INSERTION OF NEW SECTION BY CAA, 2020**

New section 129A has been introduced, which prescribe classes of unlisted companies to prepare and file their periodical financial results at a frequency that will be notified later. This provision is aimed at improving corporate governance.

The below stated is the exact draft of Section 129A. However, the same is yet to be notified.

129A. **PERIODICAL FINANCIAL RESULTS**

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

(a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed;

(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.
THE COMPANIES (AMENDMENT) ACT, 2020

CS Rajkumar Umedlal Gor

JURISPRUDENCE OF COMPANIES (AMENDMENT) ACT, 2020

In order to achieve the vision of 5 trillion-dollar economy, and to facilitate ease of doing business for corporate citizens, it was advocated by Government of India to bring certain amendments in the existing Companies Act, 2013 (“Act, 2013”). Accordingly, Company Law Committee (“CLC Committee”) was constituted by Government on 18th September, 2019, consisting of representatives from Ministry of Corporate affairs, Industry Bodies and Professional Institutes to give recommendations on further amending the existing Companies Act, 2013.

CLC committee in its report dated 14th November, 2019, recommended decriminalizing certain offences which lack any element of fraud or do not involve larger public interest. Besides decriminalization of offences, the Chapter on Producer Companies has been incorporated in the Act itself, also provisions relating to the definition of listed company, CSR provisions, listing of securities abroad, periodical returns by unlisted companies, remuneration of IDs and NEDs in the event of inadequacy of profits, etc. also amended.

The Companies Amendment Act, 2020 received the President’s assent on 28th September, 2020 and same is published in official gazette on 29th September, 2020. However, the provisions of the Act is yet to be notified by the Government.

DECRIMINALIZING CERTAIN OFFENCES:

Offence means any act or omission, made punishable by law for the time being in force. Companies Act, 2013 have below said framework for dealing with offences:

<table>
<thead>
<tr>
<th>Offences</th>
<th>Liable to</th>
<th>Deemed to</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Penalty; Fine; Fine or Imprisonment or both; Fine and Imprisonment</td>
<td>Compoundable Non-Compoundable Cognizable Non-cognizable</td>
</tr>
</tbody>
</table>

The concept of penalty was first introduced by Companies Act, 2013 with the intent of speedy disposal of less serious matters with in-house adjudication i.e. at ROC level and thereby reducing burden on the Courts dealing with the Company Law related matters. Although the term Penalty and Fine are used interchangeably by common man, the Companies Act, 2013 gave clear demarcation between the two.
All the offences which are liable to penalty are subject to in-house adjudication i.e. triable by ROC.

All the offences which are liable to fine or imprisonment can be adjudicated by Court of competent jurisdiction only.

MAJOR AMENDMENTS PROMOTING EASE OF DOING BUSINESS AND GOOD CORPORATE GOVERNANCE:

Apart from decriminalizing various offences, the Amendment Act, 2020 provides for 10 major amendments which promote ease of doing business and good corporate governance.

1. Amendment in the definition of listed Companies:

In order to exempt debt listed companies from various compliance requirements and thereby promote listing of debt securities, the amendment is carried under section 2(52) of Companies Act, 2013 to empower Central Government to exempt certain companies based on their listing of certain class of securities on recognized Stock Exchanges. Prior to the amendment, all the companies, who had listed their securities (whether equity or otherwise) were treated as listed companies and various listing compliance requirements were made applicable to them. Excessive compliance burden was preventing companies from listing their debt securities on stock exchanges.
2. Direct Listing on Foreign stock exchanges:

Prior to the amendment in section 23 of Companies Act, 2013, if any entity intended to raise fund from overseas by way of issue of securities, they were required to issue depository receipts i.e. ADR/GDR. With this amendment, now certain class of companies, as may be prescribed, can go for direct listing of their securities on foreign exchanges subject to compliance with the law for the time being in force.

3. Rectification of name of the Company:

Companies, who have been instructed by Central Government to change their name are required to do so within a period of 3 months (earlier 6 months) and if a company fails to do so, Central Government will allot the name to the company on its own. However it is always open for company to apply for name change as and when required. This amendment reduced the time period for name change and also did away with the penal provision.

4. Amendment in section 117 of Companies Act, 2013 relating to filing of Resolution by NBFC & HFCs:

This was much awaited amendment for NBFCs & HFCs as with this amendment, now NBFCs & HFCs need not file any resolution for granting loan, providing guarantee & securities in the ordinary course of its business. Prior to this amendment, only Banking Companies were exempted from requirement of filing resolution under section 117 of the Companies Act, 2013.

5. CSR Amendments:

The Jurisprudence behind the Corporate Social Responsibility ("CSR") is that, since the Corporates are operating in & earning profits from society, they must return to the society by doing something for the society.

With this background, the concept of CSR was first introduced under Companies Act, 2013 as a voluntary requirement, which later on made mandatory requirement for the companies, who are satisfying the threshold criteria as mentioned under section 135(1) of the Act, 2013 ("eligible companies"). Section 135(5) of the Act requires all eligible companies to spend at-least 2% of their average net profit for last 3 immediately preceding financial years as CSR expenditure. Prior to the amendment in the section 135, there was no provision for set-off for excess expenditure on CSR. Accordingly, it was discouraging companies to adopt larger projects. In order to promote the very object of CSR, the amendment is made under section 135 to allow companies to set-off any excess amount spent on CSR in particular year from the budget of next year.

To reduce the compliance burden on smaller corporates, the Amendment Act, 2020 relaxed the requirement of constitution of CSR committee for those companies who do not have CSR budget more than Rs. 50 lakh in a financial year.

6. Quarterly Financial Reporting by unlisted companies:

Considering the larger exposure of public money in listed entities, they are required to submit periodical audited/ un-audited (limited reviewed) financial statements to stock exchanges. The object of mandating submission of periodic financial statements is to keep track on financial position of the companies and to detect the financial irregularities (if any) and to take corrective measures at early stage.

Since larger unlisted public companies are also material contributor to the economy of the nation, it was felt to bring similar provision for them as well where they need to submit their audited/un-audited periodical financials to MCA. This will act as an early warning for potential irregularities (if any) and fraud detector for MCA.
7. Remuneration for All Directors:

Schedule V of Companies Act, 2013 provides for manner of payment of remuneration to Managerial Persons despite of inadequacy of profit. However Act did not contain any provision for payment to Non-Executive Directors and Independent Directors except for payment of sitting fees for attending Board & Committee meetings. To plug this in, the amendment under section 149 & 197 of the Act is made, to provide for payment of remuneration to Non-Executive Director & Independent Director in accordance with schedule V of Companies Act, 2013 during the inadequacy of profit in a year.

8. Winding up:

After considering the practical difficulty as faced by company liquidator, the Amendment Act, 2020 allows liquidator to approach to NCLT for issuance of necessary directions to Company/officers of the company to co-operate with liquidator. It also provides that if Liquidator fails to perform his/her duties, same will be treated as offence under IBC 2016 (read with rules/regulations made thereunder).

9. Red eyes for always late fillers:

Amendment Act, 2020 provides that if any company fails to file the required resolution within prescribed time twice, then Central Government may charge higher additional fees from the 3rd failure onwards.

10. Producer Companies:

Amendment Act, 2020 brought a separate chapter on Producer Companies on similar line with Companies Act, 1956.

Conclusion

Companies (Amendment) Act, 2020 is a welcome move from Government in promoting ease of doing business, Good Corporate Governance, Lesser Compliance Cost for emerging corporates, relief for larger corporate (CSR related Amendments).

However, it may be recommended to further decriminalize the offences which lack the element of fraud, or where there is lesser / no public money is involved. It is also recommended to develop mechanism for time bound disposal of long pending applications (including applications for compounding) and thereby reducing the burden of compliance cost.

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NEW LABOUR LAWS CODE, 2020

Background:

India is among the countries having complex regime of labour laws. There has always been a discussion to make the existing labour laws in India much simple and easy to implement by the establishments. These four new labour codes will introduce historical changes in labour laws present in the country.

Parliament of India had passed three new Labour Code Bills on 23rd September, 2020. They got the Presidential Assent on 28th September, 2020. These three bills comprise of, the Industrial Relations Code, the Occupational Safety, Health and Working Conditions Code, and the Social Security Code, along with the Code on Wages, 2019. The Government of India is yet to notify the effective date of the Codes. Further, the rules with regards to the Codes are yet to be published. The Codes together with the Code on Wages, 2019 that was passed by the Parliament last year, form part of the Government's labour reform agenda in India. All these codes subsume 29 labour laws which focuses on wages, industrial relations, social security, safety, and welfare conditions.

Recent amendments have brought in key changes in the existing acts namely The Factories Act, 1948, The Industrial Disputes Act, 1947 and The Industrial Employment (Standing Orders) Act, 1946.

The new labour codes will endorse harmony in industrial relations to achieve higher productivity and more employment generation.

These Codes proposes to increase the ambit of social security of workers by including gig workers and inter-state migrant workers simultaneously it also proposes measures that will provide greater flexibility to employers to hire and fire workers without government permission.
THE INDUSTRIAL RELATIONS CODE, 2020

Background:

The Industrial Relations (IR) Code aims to amalgamate, simplify and rationalize the provisions of the three previously existing enactments relating to the following acts:

- The Industrial Disputes Act, 1947;
- The Trade Unions Act, 1926; and
- The Industrial Employment (Standing Orders) Act, 1946.

The purpose of this IR Code is to facilitate a better relationship between employer and employee by introducing simpler adjudication mechanisms.

Applicability:

This code will be applicable to every industrial establishment wherein three hundred or more workers, are employed, or were employed on any day of the preceding twelve months.

Salient Features of Industrial Relations Code Bill, 2020:

There are some of the definitions which will be amending through IR Code. The amendments which pertain to those definitions are as follows:

- **Employer:** The definition of "employer" has been expanded to include:
  - in relation to an establishment which is a factory, the occupier of the factory as defined in section 2(n) of the Factories Act, 1948 and, where a person has been named as a manager of the factory under section 7(1)(f) of such act, the person so named;
  - in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;
  - contractor; and
  - legal representative of a deceased employer.
• Fixed Term Employment: The IR Code introduces a new provision for "fixed term employment" which means and refers to the engagement of a worker on the basis of a written contract of employment for a fixed period across all working sectors along with statutory benefits with regards to minimum wages, provident funds and medical benefits amongst the various others.

• Industry: The definition of "industry" will bring exclusion of the following:
  
  • institutions owned or managed by organizations’ wholly or substantially engaged in any charitable, social or philanthropic service; or
  • any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central Government dealing with defense research, atomic energy and space; or
  • any domestic service; or
  • any other activity as may be notified by the Central Government

In the erstwhile, several other establishments such as hospitals, educational, scientific institutions etc. which were excluded, have now been withdrawn from this list of exceptions under the definition.

• Industrial Dispute: This definition has been expanded to include any dispute or difference between an individual worker and employer connected with, or arising out of any discharge, dismissal, retrenchment or termination of such worker within its ambit.

• Worker: The definition of a "worker" has been prolonged to include within its ambit working journalists as defined in Section 2(f) of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined Section 2(d) of the Sales Promotion Employees (Conditions of Service) Act, 1976. There is segregation of persons from the definition of worker which amends the limit of earning capacity of persons employed in a supervisory capacity and earning less than Rs.18,000 per month (or any amount as notified by the Central Government) have been brought under the definition.

Registration of Trade Unions:

Under IR code, seven or more members of a Trade Union may apply for registration by complying with rules as prescribed under this Code. Trade Union cannot get them registered unless they have a minimum membership of at least 10% of the workers or one hundred workers, whichever is less, engaged or employed in the industrial establishment or industry with which it is connected on the date of making of application for registration.

Recognition of Trade Unions:

The Central or State Government may recognize any Trade Union or federation of Trade Unions as Central or State Trade Union at the Central or State level, respectively for the resolution of disputes.
Standing Orders:

Every employer of the industrial establishment must prepare the standing orders on the matters as set out in the first schedule of this code, where 300 or more workers are employed or were employed on any day of the preceding twelve months. In earlier provisions of Industrial Employment (Standing Orders) Act, 1946 makes it obligatory for employers of an industrial establishment wherein one hundred or more workers are employed to define the conditions of employment and rules of conduct for workmen, by way of standing orders and to make them known to the workmen employed.

The matters listed in the Schedule are given herein below:
- Classification of workers.
- Manner of intimating to workers periods and hours of work, holidays, pay-days and wage rates.
- Procedure and Conditions for applying and granting of leave and holidays to workers.
- Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workers arising therefrom.
- Termination of employment, and the notice thereof to be given by employer and workers.
- Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
- Means of redress for workers against unfair treatment or wrongful exactions by the employer or his agents or servants.

The Central Government will make model standing orders relating to conditions of service and other matters incidental thereto, based on which the industrial establishment can prepare their standing orders accordingly.

With increase in the threshold limit, need of a standing orders in many of the industrial establishments, the process of hiring and firing workers will become more flexible and faster for employers resulting in increase in employment generation.

Grievance Redressal Committee:

This code provides that every establishment employing 20 or more workers shall have one or more grievance redressal committee for resolution of disputes arising out of individual grievances. The committee will be comprising of equal number of members representing the employer and the workers chosen in such manner as may be prescribed. Further, the total number of members in such committee shall not exceed ten and there shall be equal representation of women workers in the committee and such representation shall not be less than the proportion of women workers to the total workers in an establishment. The erstwhile law provided for grievance settlement authorities to be set up in every industrial establishment in which 50 or more workers are employed. There was no citing provided for equal representation of women in the committee.
Constitution of Industrial Tribunals:

This code provides for the constitution of one or more industrial tribunals and a National Industrial Tribunal to decide industrial disputes. The industrial tribunals shall be set up in place of the existing adjudicating authorities under the Industrial Dispute Act, 1947. Every industrial tribunal shall consist of two members to be appointed by the appropriate Government out of whom one shall be a judicial member and the other, an administrative member in place of only one judicial member presently. The Central Government may by notification, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which involves questions relating to national importance. The National Industrial Tribunal will be consisting of two members which may be appointed by the Central Government.

Prohibition on Strikes and Lock-Outs:

This code introduces new conditions for carrying out a strike. No worker can go on a strike without giving notice to the employer within a period of 60 days before striking; or within 14 days of giving such notice; or before the expiry of the date of strike specified in such notice; or during the pendency of conciliation proceedings; or 7 days after the conclusion of conciliation proceedings; or during the pendency of arbitration proceedings; or 60 days after the conclusion of arbitration proceedings; or during any period in which a settlement or award is in operation in respect of any matters covered by the settlement or award.

Similarly, no employer of an industrial establishment shall lock-out any of his/her workers unless the conditions mentioned above are met. The time period for arbitration proceedings has also been included in the conditions for workers before going on a strike. Previously, a person employed in a public utility service cannot go on strike unless they give notice for a strike within six weeks before going on strike or within 14 days of giving such notice, which the Industrial Relation Code now proposes to apply for all the industrial establishments.

Lay-off, Retrenchment and Closure:

Under the Industrial Dispute Act, industrial establishments with more than 100 workers employed were required to obtain prior permission from the appropriate Government to lay-off/retrench workers as well as in cases of closure of an industrial undertaking. The IR Code has waived off this requirement for non-seasonal industrial establishments such as mines, factories and plantations employing from 50 to 300 workers. These non-seasonal establishments have to prior permission of the appropriate Government for lay-off, retrenchment and closure. However, it is not necessary to obtain prior permission in cases wherein such lay-off is due to shortage of power, natural calamity, and in the case of a mine, such lay-off is due to fire, flood, excess of in flammable gas or explosion. Within one year of retrenchment of workers, if any employer seeks to re-employ a person, then he must give first preference to the retrenched workers over other persons.

Negotiating Union:

This code provides for a negotiating union in an industrial establishment, having a registered trade union for negotiating with employer of the industrial establishment, on such matters as may be prescribed. Further, if there is only one trade union of workers registered in industrial establishment, then, the employer of such establishment will be required to recognise such trade union as the sole negotiating union of the workers subject to criteria as may be prescribed.
In case of multiple trade union are functioning in the establishment, the trade union who have the support of at least 51% of workers will be recognized as the sole negotiating union by the employer. Further, if there are multiple trade unions in an industrial establishment, and if no such trade union has the support of 51% or more workers, then the employer must constitute a negotiating council which has the support of not less than 21% of the total workers of that industrial establishment.

Unfair Labour Practices:

Under IR code, every employer or workers or trade unions, whether registered under the code or not, are prohibited from committing any Unfair Labour Practices as specified in the Second Schedule. Any person commits any unfair labour practices as prescribed the Schedule, they will be punishable with a fine between ten thousand rupees to two lakh rupees.

Voluntary Arbitration:

The IR code permits the employer and the workers to refer the industrial dispute to arbitration, by a written agreement. The arbitrator or arbitrators as the case may be, shall investigate the dispute and will submit arbitration award signed by the arbitrator or all the arbitrators, as the case may be, to the appropriate Government.

Worker Re-skilling Fund:

The IR code introduces provisions for re-skilling of workers for the first time for those workers who have been laid-off so that they are able to secure employment again. The IR Code states that the fund shall consist of the following:

- The contribution of the employer of an industrial establishment of an amount equal to fifteen days wages last drawn by the worker immediately before the retrenchment, or such other number of days as may be notified by the Central Government, for every retrenched worker in the case of retrenchment only; and
- The contribution from such other sources as may be prescribed by the appropriate Government.

The fund shall be utilized by crediting 15 days wages last drawn by the retrenched worker to his account, within 45 days of retrenchment in the manner as may be prescribed.

Conclusion:

The IR Code appears to be a step in the right direction in terms of providing a more simplified mechanism for dispute resolution. The introduction of curbs on strikes during the pendency of litigation and alternative dispute resolution mechanisms will definitely ensure industries continue functioning without repeated stoppage of work. Similarly, the introduction of sole negotiating union and negotiating council will reduce the amount of time taken in reaching amicable settlements with employees.
<table>
<thead>
<tr>
<th>Compliance Requirement:</th>
<th>Threshold for Applicability</th>
<th>Requirement</th>
</tr>
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<tbody>
<tr>
<td>Works Committee</td>
<td>100 or more workers</td>
<td>Constitution of Works Committee consisting of representatives of employer and workers</td>
</tr>
<tr>
<td>Grievance Redressal Committee</td>
<td>20 or more workers</td>
<td>Constitution of Grievance Redressal Committees for consisting of equal number of members representing employer and workers</td>
</tr>
<tr>
<td>Preparation of draft Standing Orders by Employer</td>
<td>300 or more workers</td>
<td>Employer must prepare draft Standing Orders within a period of six months from the date of commencement of this Code</td>
</tr>
<tr>
<td>Notice of change in Conditions of Service</td>
<td>300 or more workers</td>
<td>Employers who propose to effect any change in conditions of service applicable to any worker in respect of any matter under the Third Schedule shall affect such change by giving 21 days’ notice to workers</td>
</tr>
<tr>
<td>Duty of an employer to maintain muster rolls of workers</td>
<td>50 or more workers</td>
<td>It shall be the duty of every employer for the purposes of this Chapter to maintain a muster roll and to provide for making of entries therein by workers who present themselves for work</td>
</tr>
<tr>
<td>Contribution to Worker Re-Skilling Fund</td>
<td></td>
<td>Contribution of the employer of an industrial establishment that is equal to fifteen days wages last drawn by the worker immediately before retrenchment</td>
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</tbody>
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LABOUR CODES, 2020
HIGHLIGHTS AND PECULIARITIES

I. Introduction:

“It is not the strongest or the most intelligent who will survive but those who can best manage change -Charles Darwin."

Welcome to the era filled with changes as well as challenges!!! The Covid-19 pandemic, has changed the business dynamics to the different levels and at the same time perception of the people around the world. Be ready to adapt to the changes and challenges and converting it into an opportunity.

II. Historical Background:

Before we jump on the subject, we need to look at the traces of the Codes. It all started when the first National Commission on Labour was set up on 24 December 1966 under the Chairmanship of Justice P.B. Gajendragadkar. The Commission submitted its report in August, 1969 after detailed examination of all aspects of labour problems, both in the organized and unorganized sectors and also suggested codification of the Acts and harmonization in the labour laws across the country. After almost three decades the second National Commission on Labour (NCL) was set up on 15 October 1999 under the chairmanship of Ravindra Varma, Labour Minister, which submitted its report to the then Prime Minister Late. Atal Bihari Vajpayee on 29 June 2002 had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:- (a) industrial relations; (b) wages; (c) social security; (d) safety; and (e) welfare and working conditions. After having traversed for more than five decades, what we see today recommendation of the National Commission has come into the reality to the certain extent. The Codes are though notified, but not yet enforced. It will come into the force on publication of official gazette.
### Summary of Events:

The present Codes are passed through different phases as under:

<table>
<thead>
<tr>
<th>Labour Codes</th>
<th>Date of Introduction</th>
<th>Passed in Lok Sabha</th>
<th>Passed in Rajya Sabha</th>
<th>Gazette Notification</th>
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<tr>
<td>2 The Industrial Relations Code, 2020</td>
<td>19-Sep-2020</td>
<td>22-Sep-2020</td>
<td>23-Sep-2020</td>
<td>28-Sep-2020</td>
</tr>
</tbody>
</table>

* The Code on Wages (Central) Rules, 2020 was issued for public comments on 7th July, 2020.

### Acts Subsumed under the Codes:

Following Acts are subsumed into the Codes:

<table>
<thead>
<tr>
<th>Codes</th>
<th>Following Acts are subsumed under the Code</th>
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</table>
V. What has Changed? And what is New?

The Codification of Labour Laws is much needed steps by the Union Government and also promotes initiative of “Ease of doing business in India”. It attempts to bring lots of harmonization of the provisions, uniform definitions as well as clipping of duplication and overlaps and simplification of process. It tries to balance employees as well as employers’ interest.

The major highlights of the Codes are as under:

➢ THE CODE ON WAGES ACT, 2019

a) Application to all Employees: Applicable to all Employees. Unlike the Payment of Wages Act which is made applicable to employees drawing salary below a statutory limit, and the Minimum Wages Act which is applicable to employees engaged in scheduled establishments, the Code envisages uniform applicability of the provisions of timely payment of wages and minimum wages to all employees irrespective of the wage ceiling and sector.

b) Definition of Wages:

Inclusion: basic pay, dearness allowance and retaining allowance.

Exclusion: (a) bonus payments; (b) value of the house-accommodation, supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by an order of the appropriate Government; (c) employer contributions to any pension or provident fund; (d) conveyance allowances; (e) sums paid to the employee to defray special expenses on him by the nature of his employment; (f) House rent allowance; (g) remuneration payable under award or settlement between the parties or order of court or tribunal; (h) overtime allowance; (i) commission payable to employee; (j) gratuity payments; and, (k) retrenchment compensation or other retirement benefit payable to the employee or any ex-gratia payment made to the employee on the termination of his employment.

Note: The Code prescribes that if the sum-total of the excluded components (apart from gratuity and retrenchment compensation) exceeds 50% (Fifty Percentage) then that portion of the amount exceeding 50% (Fifty percentage) (or such other percentage notified by the Central Government) is also to be calculated as ‘wages’ under the Code. Employers should be particularly wary of such a stipulation in devising salary structures for their employees.

c) Separate definition of “Worker” and “Employee”: The Code provides for separate definitions of 'worker' and 'employee'. The definition of 'employee' is broader than that of 'worker' as it includes persons carrying out managerial and administrative work. The definition of 'worker,' however, expressly includes working journalists and sales promotion employees.

d) Time limit for payment of Wages: Unless otherwise appropriate Government may, provide any other time limit, the payment shall be made for daily basis, at the end of the shift; for weekly basis, on the last working day of the week, that is to say, before the weekly holiday; for fortnightly basis, before the end of the second day after the end of the fortnight; and for monthly basis, before the expiry of the seventh day of the succeeding month.

In case of removal or dismissal or retrenchment or resignation or loss of job due to closure of establishment then the wages shall be paid within two working days of the said events.
e) Changes with respect to payment of bonus: Appropriate Government to determine threshold for the payment of bonus to employees while the provisions relating to the computation of bonus are consistent with the terms of the Payment of Bonus Act. Apart from disqualification under the existing Act, it additionally provides dismissal from service due to conviction for sexual harassment would also be considered as a ground for disqualification for receipt of bonus.

➢ THE INDUSTRIAL RELATIONS CODE, 2020

a) Definition of Worker: The Code has retained the definition of ‘worker’ but excludes apprentices. Also changed the wage ceiling of supervisory workers from Rs. 10,000 per month to Rs 18,000 per month

b) Definition of “Industry”: The definition of “industry” has been modified and provides that any systematic activity carried on by cooperation between employer and his workers, whether such workers are employed by such employer directly or by or through any agency including a contractor. The definition has specifically excluded institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic services; sovereign functions; domestic services.

c) Definition of Strike: The Strike now include ‘mass casual leave’ by 50 % or more workers on leave on a given day

d) Introduction of “Fixed Term Employment”: Employer can keep Fixed Term Employees for specific duration and retrenchment compensation not to be paid. However, these employees will be entitled same salary or social security as regular Employee. Such employee would be eligible for gratuity if he renders service under the contract for a period of one year.

e) Prior Notice for Lock out/Strikes: Now 14 days prior notice to be given for strikes or lockouts in any establishment (earlier restricted only to public utility service)

f) Exemption for establishment having less than 300 workers: The provisions of Standing Orders shall not be applicable to an Industrial establishment having less than 300 workers. Further, such establishments can lay-off, retrench workmen or can closed establishment without government approval. (Earlier this limit was 100 employees)

g) Introduction of “Re-Skilling Fund”: The Code has provided setting up of a reskilling fund by the appropriate government which shall consist of contribution by an employer equal to fifteen days wages last drawn by the worker immediately before the Retrenchment. The fund shall be utilised by crediting fifteen days wages last drawn by the worker to his account who is retrenched, within forty-five days of such retrenchment, in such manner as may be prescribed.

➢ THE CODE ON SOCIAL SECURITY, 2020

a) Coverage: In addition to the employee/worker of the establishment as applicable, the code also aims to cover Gig-Workers, Platform Workers, Home Based Workers and Unorganized Workers and provides for formulation of suitable welfare scheme by Central and State Government w.r.t. life and disability cover, health and maternity benefits, Old age protection, Education, crèche, provident fund, Employment injury benefit, Housing, Educational schemes for children and Old age homes etc. Such schemes for gig workers, platform workers, and unorganized workers may be financed through a combination of contributions from the employer, employee, and the appropriate government.
b) Registration of on demand workers: Aadhar based registration based on self-declaration by every unorganized worker, gig worker or platform worker.

c) Applicability to all Establishments: All establishments having 20 or more workers come under the purview of EPF, earlier it was applicable only on those establishments included in the schedule.


e) Gratuity Permanent employees would be eligible for gratuity after completion of five years as presently exist under the Act, while fixed-term employees will have no such criteria, such employees will be paid on the basis of their tenure of employment with one organization. Code has fixed different threshold with respect to eligibility for gratuity of permanent and fixed term employees. The threshold Gratuity period for working journalists shall be three years.

f) ESIC Coverage: If employer and majority employees agree then voluntary registration has been allowed under the code and ESI scheme will be applicable. Further, government can extend ESI scheme to any hazardous occupational so even if a single employee is employed.

g) Provided Fund: The Provident Fund Scheme which now will be applicable to every establishment in which twenty (20) or more employees are employed. The Central Government may, establish a provident fund where the contributions paid by the employer to the fund shall be ten per cent (10%) of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contactor). The employee’s contribution shall be equal to the contribution payable by the employer in respect of him. The Central Government, may, by notification, increase the contribution percentages to twelve percent (12%) for both employers and employees of certain establishments.

h) CSR Funds to the Social Security Schemes : The Central Government may notify that contribution to the Social Security Funds as CSR Expenditure

i) Continuation of Existing scheme for one year from commencement : The Codes provides that the Employees' Provident Funds Scheme, 1952, the Employees' Deposit Linked Insurance Scheme, 1976, the Employees' Pension Scheme, 1995 and the Tribunal (Procedure) Rules, 1997 framed or made under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 and the rules, regulations and schemes made or framed under the Employees’ State Insurance Act, 1948, shall remain in force, to the extent they are not inconsistent with the provisions of this Code for a period of one year from the date of commencement of this Code.

➢ THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

a) Registration: Code provides single registration for an establishment instead of multiple registrations. This will design a centralized database and develop an ease of doing business.

b) Mandatory Appointment Letter: Appointment letter is made mandatory.

c) Special Provisions w.r.t. Women Employees: The Codes provides that no discrimination for women and men for job profile shall be made. Further women with her consent and other safety measure can work beyond 7 pm and 6 am. Unlike the current laws, women can be hired on dangerous operation with ensuring adequate safety.
d) Defined Core and Non-Core Activities: The new definition of Core Activity provides that activity for which establishment is set-up and other activity like housekeeping, Security, canteen etc not to be treated as core activities.

e) Overtime and Working Hours: The work hours for different classes of establishment and employees shall be as per the rules prescribed by central or state government. Further, in relation to overtime work, an employee shall be paid twice the rate of daily wages. The code in regard to leaves states that no employee shall work for more than 6 days a week, however, an exception has been provided for motor transport workers. Further, it provides that appropriate Government may prescribe the total number of Hours of overtime.

f) Definition of Factory: The definition of the “Factory” has been revised under section 2 (w) and threshold limit of employees is now 20 in case of use of power and 40 in case without power and has specifically excludes, hotels, restaurant, eating place, Electronic Data Processing Unit or a Computer Unit etc.

g) Definition of Inter-State Migrant: Definition of “Inter State Migrant worker” has been modified and ceiling limit of Rs 18,000/- has been introduced.

h) Definition of Worker: Definition of “worker” has been revised and includes persons in supervisory capacity and working journalists, sales promotion employees getting salary up to Rs. 18000/- per month or as may be notified by the Central Government from time to time.

i) Appropriate Government: The appropriate government for the factory governed by the central government will be central government, including establishment of contractors for the purposes of such establishment. In other cases the concerned State Government where it is situated.

j) Canteen: For 100+ Workers (Earlier for 250+ Workers)

k) Safety Officer: 1 for 250+ for Hazardous and 1 for 500 for Non Hazardous (Earlier 1 safety office for 1000+ workers under the Factories Act, 1948, unless amended by the State Govt.)

l) Welfare Officer: 1 for 250+ Workers (Earlier 1 Welfare Officer for 500+ workers)

m) Shelter Rooms: Now for 50+ Workers (Earlier for 150+ Workers)

n) Crèche Facility: Now 50+ More Workers (Earlier applicable when 30 or more women employees)

o) Chief Inspector cum Facilitator: Now Inspector are termed as are “Inspector cum Facilitator” and is now bound to guide the employer on compliance. Further on occasion of certain non-compliance Inspector to give opportunity to rectify the compliance and penalty would only be imposed if employer can’t rectify the compliance.

p) Pooling of Resources: The Codes refers pooling of resources and therefore the employer may have option to pool some resources w.r.t. canteen, crèche, Health facilities etc. The stand will be clear after notification of rules.
VI. **Challenges:**

The passing of Labour Codes is a welcome step by the Union Government, but since “Labour” falls under the concurrent list of the Constitution, the states are empowered to make law. It would be interesting to see take on this by the state government. Further, the Codes has many enabling provisions and therefore major portion would be notified in the rules to be made thereunder and therefore it would be too early to comment on the same.

VII. **Role of Company Secretaries in Employment:**

Pursuant to Section 205 (1) of the Companies Act, 2013, the functions of the company secretary shall include, reporting to the Board about compliance with the provisions of the Companies Act, 2013 the rules made thereunder and other laws applicable to the company. Therefore, it is a nice opportunity to the Company Secretaries to make breakthrough and advice management on appropriate compliance strategy and planning in to meet the entailed compliance requirements.

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New Labour Codes – A Step Towards “Ease of Doing Business”

C.B. Prabhumirashi  
Practicing Company Secretary  
Pune

With a view to reform the archaic labour laws and to facilitate the ease of doing business in India, the Government of India has decided to consolidate twenty nine (29) central labour laws into four (4) labour codes, namely,

1. The Code on Wages, 2019 (the “Code on Wages”);  
2. The Code o Social Security, 2020 (the “SS Code”),  
3. The Occupational Safety, Health and Working Conditions Code, 2020 (the “OSH Code”),  
4. The Industrial Relations Code, 2020 (the “IR Code”).

Salient Features of “Code of Wages”:-

- The Code on Wages, 2019 was introduced in Lok Sabha by the Minister of Labour, Mr. Santosh Gangwar on July 23, 2019. It seeks to regulate wage and bonus payments in all employments where any industry, trade, business, or manufacture is carried out. The Code replaces the following four laws:
  (i) The Payment of Wages Act, 1936;  
  (ii) The Minimum Wages Act, 1948;  
  (iii) The Payment of Bonus Act, 1965; and  

- Coverage: The Code will apply to all employees. The central government will make wage-related decisions for employments such as railways, mines, and oil fields, among others. State governments will make decisions for all other employments.

- Wages include salary, allowance, or any other component expressed in monetary terms. This does not include bonus payable to employees or any travelling allowance, among others.

- Floor wage: According to the Code, the central government will fix a floor wage, taking into account living standards of workers. Further, it may set different floor wages for different geographical areas. Before fixing the floor wage, the central government may obtain the advice of the Central Advisory Board and may consult with state governments.

- The minimum wages decided by the central or state governments must be higher than the floor wage. In case the existing minimum wages fixed by the central or state governments are higher than the floor wage, they cannot reduce the minimum wages.
• Fixing the minimum wage: The Code prohibits employers from paying wages less than the minimum wages. Minimum wages will be notified by the central or state governments. This will be based on time, or number of pieces produced. The minimum wages will be revised and reviewed by the central or state governments at an interval of not more than five years. While fixing minimum wages, the central or state governments may take into account factors such as: (i) skill of workers, and (ii) difficulty of work.

• Overtime: The central or state government may fix the number of hours that constitute a normal working day. In case employees work in excess of a normal working day, they will be entitled to overtime wage, which must be at least twice the normal rate of wages.

• Payment of wages: Wages will be paid in (i) coins, (ii) currency notes, (iii) by cheque, (iv) by crediting to the bank account, or (v) through electronic mode. The wage period will be fixed by the employer as either: (i) daily, (ii) weekly, (iii) fortnightly, or (iv) monthly.

• Deductions: Under the Code, an employee’s wages may be deducted on certain grounds including: (i) fines, (ii) absence from duty, (iii) accommodation given by the employer, or (iv) recovery of advances given to the employee, among others. These deductions should not exceed 50% of the employee’s total wage.

• Determination of bonus: All employees whose wages do not exceed a specific monthly amount, notified by the central or state government, will be entitled to an annual bonus. The bonus will be at least: (i) 8.33% of his wages, or (ii) Rs 100, whichever is higher. In addition, the employer will distribute a part of the gross profits amongst the employees. This will be distributed in proportion to the annual wages of an employee. An employee can receive a maximum bonus of 20% of his annual wages.

• Gender discrimination: The Code prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature. Work of similar nature is defined as work for which the skill, effort, experience, and responsibility required are the same.

• Advisory boards: The central and state governments will constitute advisory boards. The Central Advisory Board will consist of: (i) employers, (ii) employees (in equal number as employers), (iii) independent persons, and (iv) five representatives of state governments. State Advisory Boards will consist of employers, employees, and independent persons. Further, one-third of the total members on both the central and state Boards will be women. The Boards will advise the respective governments on various issues including: (i) fixation of minimum wages, and (ii) increasing employment opportunities for women.

• Offences: The Code specifies penalties for offences committed by an employer, such as (i) paying less than the due wages, or (ii) for contravening any provision of the Code. Penalties vary depending on the nature of offence, with the maximum penalty being imprisonment for three months along with a fine of up to one lakh rupees.

Information about Other Three Labour Laws Codes:-
The other three Bills were referred to the Standing Committee on Labour, which later submitted its report on these Bills. Since these laws were found to be complex, with archaic provisions and inconsistent definitions, it was advised by Standing Committee that the laws be clubbed together to improve ease of compliance and ensure uniformity. It was also suggested that the Central Labour Laws broadly cover the aspects of industrial relations, wages, social security, safety and welfare and working conditions. As a result, these three Bills were replaced with new Bills by the Government on September 19, 2020.
After due consultations, these three (3) remaining labour codes i.e. the SS Code, the OSH Code and the IR Code have been passed by the Parliament on September 23, 2020 and thereafter these Codes have received the President's assent on September 28, 2020. An overview of the three (3) new labour codes is provided below:

A. The Code on Social Security, 2020 (SS Code):

The Code on Social Security, 2020 has been brought into existence out of the recommendations of the Second National Commission on Labour, which stated in its report that the current set of labour laws must be amalgamated based on subject-matter. The Code was introduced in December 2019 and the Parliamentary Standing Committee submitted its report on 31st July 2020. Thereafter, a fresh Bill was introduced, namely the current Code on Social Security, 2020 that aims to facilitate the implementation of labour laws, reduce the multiplicity of definitions, streamline the number of authorities under various laws and ensure basic concepts of welfare and benefits to workers are preserved. Another major objective of the Code is to promote technology for ensuring compliance and enforcement of the provisions thereunder is achieved with ease.

The SS Code subsumes nine (9) labour laws relating to social security, viz
a. The Employees' Compensation Act, 1923;
b. The Employees' State Insurance Act, 1948;
c. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
d. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
e. The Maternity Benefit Act, 1961;
f. The Payment of Gratuity Act, 1972;
g. The Cine-Workers Welfare Fund Act, 1981;
h. The Building and Other Construction Workers' Welfare Cess Act, 1996; and
i. The Unorganised Workers Social Security Act, 2008.

B.4 SALIENT FEATURES OF THIS CODE ARE:-

- Introduction of the definition of *career centre* as any office including employment exchange, place or portal established by the Central Government for providing career services. It aims to connect persons seeking employment with those who seek to employ by providing information about vacancies and giving vocational guidance.

- Introduction of the definition of *aggregator* which denotes a digital intermediary or marketplace for a buyer or user of a service to connect with the seller or the service provider. The introduction of this definition is linked to the ushering in of two more terms namely - *platform worker* and *gig worker*. The former refers to individuals engaged in *platform work* which is defined to mean a work arrangement outside of a traditional employer-employee relationship in which organisations/individuals use an online platform for problem-solving or to provide specific services. Whereas the latter is defined as a person who performs works or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship.

- The Code allows for an establishment to voluntarily submit to the coverage of the Employees’ Provident Fund (EPF) and the Employees’ State Insurance Corporation (ESIC), even if the number of employees in such an establishment is lower than the specified threshold.

- The Code empowers the Central Government to frame social security schemes for unorganised workers, gig workers and platform workers as well as members of their families with respect to providing benefits under the ESIC. The Central Government is also empowered to frame schemes for providing social security benefits to self-employed workers and to any other class of persons it deems fit.
• To this end, the Code also provides for registration of every unorganised worker, gig worker or platform worker based on a self-declaration provided either electronically or otherwise along with AADHAR number in a form and manner that shall be prescribed by the Central Government.

• The Code provides that in case of fixed term employees, the employer shall pay gratuity on a pro rata basis and not on the pre-existing requirement of continuous service of five years.

• There is greater clarity provided with regards to common creche facilities in the Code on maternity benefits. The second proviso states that an establishment may avail a common creche facility of the Central Government, State Government, municipality or private entity or provided by an NGO or any other organisation.

• The scheme of “penalties and offences” under the Code has also undergone certain changes. The Code allows employers an opportunity to correct non-compliance for any offence under the Act prior to the initiation of prosecution or proceedings. However, repeat offenders are given enhanced punishments and offences by companies are given stricter penalties that extend beyond the corporate veil.

Conclusion:-
The Code on Social Security, 2020 is drafted in a manner so as to cover the largest number of working individuals in the country. Its recognition of non-conventional forms of work outside the scope of the traditional employer-employee arrangement is encouraging as there is a global shift towards self-employment, gig, and platform work. Consequently, empowering the Central Government to not only provide social security benefits by framing schemes but also have accurate records of such workers through the self-declaration process ensures that there is a clearer view of the composition of our labour capital.

It is quite clearly a step in the right direction from an ease of compliance and universality perspective as it covers a large portion of our working population. Perhaps more can be done with regards to facilitating our workforce’s shift from informal to formal modes of work and it is quite possible that the Rules provide for the same, either directly or as a consequence of their net effect.

Therefore, while there is definitely room for a great deal of optimism, the same must be cautious as there still are a lot of aspects left to delegated legislation and executive rulemaking. It is only when these creases are ironed out and the Code is put into effect, can we conclusively comment on its efficacy and utility.

In pursuance of the recommendations of the Second National Commission on Labour and the deliberations made in the tripartite meeting comprising of the Government, employers’ and industry representatives, it has been decided to bring the Occupational Safety, Health and Working Conditions Code, 2020. The proposed legislation intends to amalgamate, simplify and rationalise the relevant provisions of the following thirteen Central labour enactments relating to occupation, safety, health and working conditions of workers, namely:—

a. The Factories Act, 1948;
b. The Contract Labour (Regulation and Abolition) Act, 1970;
c. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
d. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996,
e. The Mines Act, 1952,
f. The Dock Workers (Safety, Health and Welfare) Act, 1986,
g. The Plantations Labour Act, 1951,
h. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955,
i. The Working Journalists (Fixation of Rates of Wages) Act, 1958,
j. The Motor Transport Workers Act, 1961,
k. The Sales Promotion Employees (Conditions of Service) Act, 1976,
l. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and
m. The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981.

In the light of above, the Occupational Safety, Health and Working Conditions Code, 2019 was introduced in Lok Sabha on the 23rd day of July, 2019 and the same was referred to the Department related Parliamentary Standing Committee on Labour. The said Committee recommended several substantive modifications to the said Code. In addition to the said modifications, the Government of India has also proposed certain changes to the said Code in the light of COVID-19 Pandemic. In view of this, the Government of India has decided to withdraw pending the Occupational Safety, Health and Working Conditions Code, 2019 and to introduce the Occupational Safety, Health and Working Conditions Code, 2020. The proposed Code simplifies, amalgamates and rationalises the provisions of the aforesaid thirteen enactments with certain important changes which, inter alia, are as under:—

(i) to impart flexibility in adapting technological changes and dynamic factors, in the matters relating to health, safety, welfare and working conditions of workers;

(ii) to apply the provisions of the proposed Code for all establishments having ten or more workers, other than the establishments relating to mines and docks;

(iii) to provide the concept of “one registration” for all establishments having ten or more employees. However, for the applicability of all other provisions of the Code in respect of factories, except registration, the threshold has been fixed twenty workers in a factory (with power) and forty workers (without power);

(iv) to include the journalist working in electronic media such as in e-paper establishment or in radio or in other media in the definition of “working journalists”;

(v) to provide for issuing of appointment letter mandatorily by the employer of an establishment to promote formalisation in employment;

(vi) to provide free of cost annual health check-ups for employees above the specified age in all or certain class of establishments by which it would be possible to detect diseases at an early stage for effective and proper treatment of the employees;

(vii) to make the provisions relating to Inter-State Migrant Workers applicable on the establishment in which ten or more migrant workers are employed or were employed on any day of the preceding twelve months and also provide that a Inter-State Migrant may register himself as an Inter-State Migrant Worker on the portal on the basis of self-declaration and Aadhaar;

(viii) an Inter-State Migrant Worker has been provided with the portability to avail benefits in the destination State in respect of ration and availing benefits of building and other construction worker cess;

(ix) to constitute the National Occupational Safety and Health Advisory Board to give recommendations to the Central Government on policy matters, relating to occupational safety, health and working conditions of workers;

(x) to constitute the State Occupational Safety and Health Advisory Board at the State level to advice the State Government on such matters arising out of the administration of the proposed Code;
(xi) to make a provision for the constitution of Safety Committee by the appropriate Government in any establishment or class of establishments;

(xii) to employ women in all establishments for all types of work. They can also work at night, that is, beyond 7 PM and before 6 AM subject to the conditions relating to safety, holiday, working hours and their consent;

(xiii) to make provision of “common license” for factory, contract labour and beedi and cigar establishments and to introduce the concept of a single all India license for a period of five years to engage the contract labour;

(xiv) to enable the courts to give a portion of monetary penalties up to fifty per cent. to the worker who is a victim of accident or to the legal heirs of such victim in the case of his death;

(xv) to provide overriding powers to the Central Government to regulate general safety and health of persons residing in whole or part of India in the event of declaration of epidemic or pandemic or disaster;

(xvi) to make provision for Social Security Fund for the welfare of unorganised workers; and

(xvii) to make provision for adjudging the penalties imposed under the Code.

4. The notes on clause explain in detail the various provisions contained in the Code.

5. The Code seeks to achieve the aforesaid objectives.

C. The Industrial Relations Code, 2020 (IR Code):

The IR Code aims to streamline the laws regulating industrial disputes and trade unions in India. For the benefit of the employers, the IR Code has introduced various aspects such as increasing the threshold of workers to three hundred (300) for obtaining the consent of the concerned Government in case of lay off, retrenchment or closure of the establishment, notice of change not required to be given subject to the conditions stipulated in the IR Code, increasing the wage threshold to INR 18,000 (Indian Rupees Eighteen Thousand) for exclusion from the definition of worker, etc.

Similar to the OSH Code, the IR Code also introduces the concept of deemed certification of standing orders. Although the IR Code attempts to simplify the labour legislations, a wide extent of aspects under the IR Code are dealt through delegated legislations and a complete picture would be available once the Rules are framed under the IR Code and the other labour codes.

The IR Code subsumes three (3) labour laws relating to industrial relations viz
a. The Trade Unions Act, 1926;
b. The Industrial Employment (Standing Orders) Act, 1946; and
c. The Industrial Disputes Act, 1947.

D.1 Purpose and Objective:-

The said legislation provides a broader framework -

i. to protect the rights of workers to form unions;
ii. to minimise the friction between the employers and workers;
iii. to provide provisions for investigation and settlement of industrial disputes;
iv. to achieve industrial peace and harmony as the ultimate pursuit in resolving industrial disputes; and
v. to advance the progress of the industry by bringing about the existence of harmony and cordial relationship between the employers and workers.
D.2 SALIENT FEATURES:-
The code has defined the term “workers” which includes the persons in supervisory capacity getting wages up to eighteen thousand rupees per month or an amount as may be notified by the Central Government from time to time;

D.3 Fixed-Term Employment:-
The code has provided for fixed-term employment with the objective that the employee gets all the benefits like that of a permanent worker (including gratuity), except for notice period after the conclusion of a fixed period, and retrenchment compensation. The employer has been provided with the flexibility to employ workers on a fixed-term basis on the basis of requirement and without restriction on any sector;

D.4 Definition of “Industry” Revised:-
The code has revised the definition of “industry” that any systematic activity carried on by co-operation between the employer and workers for the production, supply or distribution of goods or services with a view to satisfying human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) with certain exceptions;

D.5 Concerted Casual Leave under “STRIKE”:-
The Code has the provision of bringing concerted casual leave within the ambit of the definition of strike;

D.6 Adequate Representation of Women Workers:-
The code has provided for the maximum number of members in the Grievance Redressal Committee up to ten in an industrial establishment employing twenty or more workers. There shall be an adequate representation of the women workers therein in the proportion of the women workers to the total workers employed in the industrial establishment;

D.7 Negotiating Union:-
The code has provided for a new feature of recognition of negotiating union and negotiating council in an industrial establishment by an employer for the purpose of negotiations. The criterion for recognition of negotiating union has been fixed at fifty-one per cent or more workers on a muster roll of that industrial establishment. As regards the negotiating council, a Trade Union having support from every twenty percent of workers will get one seat in the negotiating council and the fraction above twenty per cent shall be disregarded;

D.8 Appeal for Cancellation of Trade Union:-
The code has provided for an appeal against non-registration or cancellation of registration of Trade Union before the Industrial Tribunal;

D.9 Recognition of Trade Union:-
The code has a provision for empowering the Central Government and the State Governments to recognise a Trade Union or a federation of Trade Unions as the Central Trade Union or State Trade Unions, respectively;

D.10 Standing Order:-
The code has a provision for the applicability of threshold of three hundred or more workers for an industrial establishment to obtain certification of standing orders, if the standing order differs from the model standing order made by the Central Government;

It has a provision that if the employer prepares and adopts a model standing order of the Central Government with respect to the matters relevant to the employer’s industrial establishment, then the model standing order would be deemed to be certified. Otherwise, the industrial establishment may seek certification of only those clauses which are different from the model standing orders;

D.11 Industrial Tribunal:-
The code has a provision of setting up Industrial Tribunals in the place of existing multiple adjudicating bodies like the Court of Inquiry, Board of Conciliation and Labour Courts. These Tribunals will be consisting of a Judicial Member and an Administrative Member, in place of only Judicial Member who presently presides over the Tribunal. For certain specified cases, the matters will be decided by the two-member Tribunal and the remaining shall be decided by a single-member Tribunal as may be provided for in the rules;

D.12 Conciliation Proceedings:-
The code has a provision that the commencement of conciliation proceedings shall be deemed to have commenced on the date of the first meeting held by the conciliation officer in an industrial dispute after the receipt of the notice of strike or lock-out by the conciliation officer;

D.13 Strikes & Lock-Outs:-
The code has a provision for prohibiting strikes and lock-outs in all industrial establishments without giving notice of fourteen days to the employer or to his management;

D.14 Industrial Establishments Obligation:-
The code has a provision for the obligation on the part of industrial establishments pertaining to mine, factories and plantation having three hundred or more workers to take prior permission of the appropriate Government before lay-off, retrenchment and closure with flexibility to the appropriate Government to increase the threshold to higher numbers, by notification;

D.15 Re-skilling fund for Retrenched Workers:-
The code has a provision of setting up a re-skilling fund for training of retrenched workers. The fund shall, inter alia, consist of the contribution of the employer of an amount equal to fifteen days wages last drawn by the worker immediately before the retrenchment or such other number of days, as may be notified by the Central Government, in case of retrenchment only. The fund shall be utilised by crediting fifteen days wages last drawn by the worker to his account who is retrenched, within forty-five days of the retrenchment as may be provided by rules;

D.16 Compounding Offences:-
The code has a provision for compounding of offences by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of fifty per cent of the maximum fine provided for such offence punishable with fine only and for a sum of seventy-five per cent provided for such offence punishable with imprisonment for a term which is not more than one year, or with fine;
Penalties:
The code has a penal provision for different types of violations to rationalise with such offences and commensurate with the gravity of the violations. The code empowers the appropriate Government to exempt any industrial establishment from any of the provisions of the Code in the public interest for the specified period.

Reality in the implementation of these Codes:
Earlier the Government has aimed to implement all the four (4) labour codes in one go by December, 2020. However due to the COVID-19 situation, the Government has deferred the implementation of these codes from 1st April, 2021.

Now as per the information from the Labour Secretary of Ministry of Labour, Central Government, framing of the Rules for implementation of these Codes itself is tough task for the Central & State Governments. As the Labour is a concurrent matter of the Constitution of India, the States can also frame and amend the Rules which fall under the States’ domain. Therefore, the Labour Ministry of Government of India has asked all the State Governments to complete the Rules that are to be framed towards the implementation of these Codes.

Concerns raised over the new labour codes:
1. The increase in the threshold for standing orders from the existing 100 to 300 is uncalled for and shows the government is very keen to give tremendous amounts of flexibility to the employers in terms of hiring and firing, dismissal for alleged misconduct, and retrenchment for economic reasons will be completely possible for all the industrial establishments employing less than 300 workers. This is complete demolition of employment security.

2. The Industrial Relations Code also introduces new conditions for carrying out a legal strike. The time period for arbitration proceedings has been included in the conditions for workers before going on a legal strike as against only the time for conciliation at present.

3. At present, a person employed in a public utility service cannot go on strike unless he gives notice for a strike within six weeks before going on strike or within fourteen days of giving such notice, which the IR Code now proposes to apply for all the industrial establishments.

4. The IR code has expanded to cover all industrial establishments for the required notice period and other conditions for a legal strike. The Standing Committee on Labour had recommended against the expansion of the required notice period for strike beyond the public utility services like water, electricity, natural gas, telephone and other essential services.

5. Similarly, clauses in the OSH Code, 2020 allow the government to exempt new establishments from the law for a specified period in the interest of promoting economic activity and employment. Earlier, such exemptions were allowed only for public emergencies and that too was limited to a three-month period. These exemption clauses will have a negative impact on the coverage of the new laws and affect labour welfare.

Benefits of implementation of these Codes in India:
1. Helping in “Ease of Doing Business” in India:
The main intension of introducing these codes is to try to bring up the ranking of India in “Ease of Doing Business” in the global perspective. This improvement in ranking further will help India to increase business & employment opportunities for the global business establishments into India.

2. Attracting foreign investors to invest in different projects in India as certain policies with regard to Foreign Exchange Management Act are also changed:
The process of implementation of these codes will in turn help to attract the much-needed foreign investments in India, as the labour policy are tuned towards attracting more businesses to come & invest in conducive business environment in India. The Government of India has already introduced adequate changes / alterations in its Policy on Foreign Direct Investment in this regard with effect from 15.10.2020 by bringing in new Foreign Direct Investmet Policy.

3. Increasing employment opportunities to aspirants:-
It is expected that the introduction of these codes will help to attract more entrepreneurs to come forward to establish their businesses which will in turn to increase the employment opportunities to the aspirants and reducing unemployment.

4. Paving the way of smooth relations between the employer & employees:-
The labour codes will have win-win situation for both the employer & employee, thereby strengthening the relations between them in the long run. It is expected that whenever there will be any disputes, both the parties will come to the meaningful dialogue to resolve the matter amicably and to end the dispute for them mutual benefit.

5. Increasing the productivity of labour as the concentration on work allotted by the employer to the employee:-
It is expected that there will be little wastage (except the allowable time for some important work) of time and the worker / employee will be able to concentrate on the work allotted to him / her which in turn will help to increase productivity.

6. Checking of mal-practices adopted by the employer in certain cases:-
Even though it is argued by many union leaders, the employer cannot take action against its employees / workers arbitrarily without sufficient cause. Thus the codes will be able to protect the labourers / employees against such kind of mal-practices.

7. Changing the attitude of the employees towards the work allotted to him / her:-
It has been argued by many scholars and foreigners that the Indians are lazy and therefore there is a tendency of avoiding the work which has been allotted to the Indians. It has been further argued that India is country of Holidays, and frequent absenteeism without giving notice in advance with sufficient cause is causing the problems to the employer.

Actually these arguments are not at all false, but now we can change this picture by changing the attitude of the employees / workers. The codes will certainly help the employees / workers to change their attitude as the employer has been given the requisite powers to do the things in right perspective (but not arbitrarily). The aim of the code is to end / resolve the dispute between the Employee & Employer in an amicable manner.

8. Strengthening compliance system through digitisation & simplification of records and returns under these Codes:-
The codes require the employer to comply with the Rules & Regulations through the digitisation of records. Even the returns are to be filed by the employer through the using Internet System. This will help in reduction of wastage of time, and an increase in the compliance level, which is the ultimate motive of the Government.

Concern for Employer:-
1. Employers are required to be aware of this development and assess the impact on their organisations. A change in the definition of wage not only has a bearing on cash flow of the company – enhanced contribution, revised provision for gratuity and other retirals – but also on the net pay of employees. It is necessary that employees look at the implications of keeping specific salary structures in mind and determine the impact. Implications are also triggered in respect of Fixed Term Employees, where gratuity liability is activated.
2. Aggregators will also have to look at the impact on account of the proposed contribution to social security fund, which could be between 1% to 2% of their turnover, limited to 5% of the payouts being made to gig workers/platform workers etc.

3. Further, the current policy and process framework will have to be revisited in line with the new Codes, and technology interface should be appropriately built-in. There are a handful of developments every day and more notifications and clarifications are awaited in the days to come.

4. The employer will have to keep tabs to ensure smooth transition to the new Code, as after all, well begun is a job half done.

Role of Company Secretary:-
The role of the Company Secretary in the implementation in those applicable Codes to the company is immense as Practicing CS is required to certify that the compliance in this regard is done by the respondent company after obtaining necessary certificate from the Board of Directors in this regard from the concerned company.

In the case of employee Company Secretary, he / she is required to guide the company to correctly interpret the Provisions of Rules & Codes, and then help the Management in implementing the same in the concerned company.

Conclusion:-
It is mentioned by the stakeholders that due to COIVD-19 Pandemic, jobs loss of millions of workers / employees as well as monetary loss faced by almost all countries in globe, it is therefore highly necessary that now everyone (i.e. stakeholders including employees / workers) to take a note of this sizable loss and work together to avoid further losses. All the Labour Codes have laid down the foundation of workers benefits, giving them their meaningful rights but also have put on certain restrictions on them which will facilitate the employer to carry out business smoothly. The progress of a country depends upon many economic factors (which necessarily include Employment) & therefore, for India, it is necessary for all to take all these Codes in that perspective, and work towards building the prosperity & economic growth of India.

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SECRETARIAL AUDIT: STEPPING STONE TOWARDS GOOD GOVERNANCE

CS Vipul Jain

INTRODUCTION:
Despite penning down the threshold limit for applicability of Secretarial audit and listing down the regulations covered, this write up will articulate about the deep insights and untouched aspects about Secretarial Audit, its benefits to stakeholders and to the legal wing of the company, also commenting on the MCA Notification dated 6th January, 2020 mandating that “every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more” to conduct secretarial audit.

SECRETARIAL AUDIT – AN IMPERATIVE MOVE TO ENSURE CORPORATE GOVERNANCE, COMPLIANCE AND TRANSPARENCY

Although the Company Secretary is performing its roles and responsibilities as prescribed under section 205 of Companies Act, 2013, however, the possibility for committing error cannot be ignored, therefore these can be independently identified and reported by an independent professional as the Secretarial Auditor who can unbiasedly conduct his audit and help to know the non-compliance or inadequate compliances committed by the company, if any, in his report, which can be helpful to the various stakeholder as well as government authorities to take appropriate action.

Therefore, the government has fairly considered for introducing the secretarial audit for specified companies as well as all the listed entities, more over looking into the quality of the Secretarial Audit and requirement for quick action on the non-compliance of any of the SEBI Regulations, moreover, the SEBI has also amended the SEBI (LODR) Regulations, 2015 and inserted clause 24A for prescribing the requirement for providing Annual Secretarial Compliance Report by all the listed entities, from the financial ended 31st March, 2019 and onward within 60 days from the end of the financial year in the separate form prescribed, which includes the follow up action reporting for the previous year observations, if any by the Company Secretary in practice, however the professional may be different from the Secretarial Auditor as such.

The aforesaid measures taken by the Central Government and the SEBI will be helpful to ascertain the transparency on the compliance of not only the Companies Act, 2013 and SEBI Regulations but all other major applicable laws on the companies including the material subsidiaries of the listed entities. Secretarial audit is basically non-financial audit that focuses on legal compliance management and governance, however, the financial transaction with the related parties u/s 188, loans and advances u/s 186, loans to directors and related persons u/s 185, deposits u/s 73 cannot be ignored while conducting secretarial audit, therefore, to monitor compliances under various regulatory aspects there is a need to get the audit done.
COMPARATIVE ANALYSIS BETWEEN SECRETARIAL AUDIT AND ANNUAL SECRETARIAL COMPLIANCE REPORT:

Introduction of Secretarial audit became mandatory for the listed and specified companies in the year 2014 and was mandatory for the financial ended on 31st March, 2014 and onwards whereas the SEBI has also amended the SEBI (LODR) Regulation 2015 and inserted Class 24A which has become applicable to all the listed entity for the financial year closed on 31st March, 2019 and onwards accordingly all the listed entities has to take ‘Annual Secretarial Compliance Report’ (‘ACR’), from the Practicing Company Secretary and the same needs certify compliances of all the SEBI regulations as may be applicable during the financial year as well as action taken on the observation raised in the previous year report. But as the economy flourished and initiated with startup culture the potential investors including the foreign investors deployed huge amount of funds into the companies, therefore, the scope of Secretarial audit doesn’t restrict here, it got further extended by introducing the audit for the other companies with huge borrowings, therefore, Ministry of Corporate Affairs inculcated certain amendments in the section 204 of the Companies Act, 2013.

Now looking from a broader perspective, the secretarial audit covers all the regulatory framework including the SEBI regulations wherein the Annual Secretarial Compliance report covers only the SEBI regulations thus the scope of ACR seems narrow from the stakeholders point of view, but if we consider the SEBI’s view in this regard, the introduction of ACR will provide an intense examination and reporting as to the SEBI regulations which seems apparently more transparent in the public interest.

Introduction of Secretarial audit and Secretarial Compliance Report is the reformative move whereby responsibilities are shifted from regulators to the practicing professionals to ensure compliances and reporting of non-compliances.

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<thead>
<tr>
<th>Particular</th>
<th>Secretarial Audit</th>
<th>Annual Secretarial Compliance</th>
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<tbody>
<tr>
<td>Report issued</td>
<td>Form No. MR-3</td>
<td>Specified format prescribed under Annexure-A attached with the SEBI circular.</td>
</tr>
<tr>
<td>Applicability</td>
<td>a) Every listed company and its material subsidiaries; b) Every public company having a paid-up share capital of fifty crore rupees or more; or c) Every public company having a turnover of two hundred fifty crore rupees or more; or d) Every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more</td>
<td>Every Listed Entity.</td>
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<td>Appointing Authority</td>
<td>Board of Directors.</td>
<td>Not Specified.</td>
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</table>
2. Secretarial Standards issued by the ICSI;
3. FEMA and its applicable regulations (FDI, OCD and ECB);
5. Securities Contracts (Regulation) Act, 1956 and its Rules;
6. SEBI Act and Regulations and Guidelines made there under as applicable to the company;
7. Labour laws;
8. Any other applicable laws as applicable on the company especially sectoral laws.

Remarks by auditor
Remarks on non-compliances to be put forward for the current period of audit.
Remarks on non-compliances to be put forward for the current and period as well as steps taken to resolve the non-compliances in the previous period shall also be commented up on.

Submitted
To the stakeholders
To the concerned listed company.

Adverse Remarks
PCS to give their remarks on non-compliances.
PCS to give their remarks on regulators action and steps taken to resolve, if any.

Reporting
Part of Annual Report and filed under Form AOC-4 with RoC.
To be submitted to respective Stock exchange within 60 days from the end of Financial year.

INCREASE TRUST ON THE QUALITY OF THE SECRETARIAL AUDIT AS WELL AS ON THE PRACTISING COMPANY SECRETARIES:

**MCA Notification dated 6th January, 2020:**

Looking at the bright side of the amendment, the Banks or Public Financial Institution are facing challenges on NPA and its recovery front. Therefore, the Banks or Public Financial Institution cannot rely totally on the report of the statutory auditors. Thus, came a need of the insertion of the secretarial audit in companies involving the prescribed borrowings, wherein scrutinizing the compliance by the secretarial audit will prove to be milestone in governance and compliance management. But on the other hand the idiom “Every coin has two sides” proves true in the present scenario, because of the following reasons;

With the MCA Notification dated 6th January, 2020, it not only insert the new threshold for the audit but also make certain amendments in the appointment of Company Secretary, wherein, “Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary.” Therefore, it will hamper the employment opportunities for the Company Secretary whereas the other positive connotation is that it will increase the scope of work for the Practicing Company Secretaries. Moreover, the concept of ‘Name Lending’ will now be ruled out, and hence the transparency and brand building in the profession shall take predominance.

Some of the major key highlights of the proposed amendments in the aforesaid paper are as follows:

1. Appointment of Company Secretary for Banks:
   - All banks whether listed or otherwise, shall have a Company Secretary who is bound by the professional standards of a Company secretary.
   - The secretary shall report to the Chair of the board.

2. Secretarial Audit Applicability:
   All banks including those not listed and/or operating as branches shall undertake secretarial audit in line with provisions of section 204 of the Companies Act, 2013 the scope of which shall include compliance to guidelines/directions emanating from this Discussion Paper. The Secretarial Audit report shall be made available to the Audit Committee of the Board (ACB) which shall have an oversight over compliance to various gaps reported by the audit.

AUDITING STANDARDS- STANDARDIZING AUDIT PRACTICES

Being a premier organization, ICSI has been on the front side whenever it comes to promoting Good Corporate Governance practices amongst its members, therefore, ICSI introduce a standardize code of conduct or standards to enhance the virtue of the audit, for the first time in May, 2019, to be effective from 1st July, 2019. The same were revised and issued in January, 2020 effective from 1st April, 2020. The Auditing standards when first introduced were recommendatory to be followed by the auditors. However same has been made mandatory w.e.f. 1st April, 2020.

The salient objective of these Standards is to define principles and procedures to be followed while accepting or continuing with an Audit Engagement. Below is the list of few important AS pointers which auditor must take into consideration while conducting the Secretarial audit:

1. Confidentiality:
   - Confidentiality in the audit process should be a prima facie requirement, which need to be cater by the auditor, he shall not disclose confidential and essential information unless there is a legal obligation or duty to disclose or except for the purposes of audit.
   - As the audit process is not a single person task it involves other staff members of the auditor as well, therefore the auditor should make sure that every person engaged in the audit process adhere to the confidentiality and adhere to the terms of confidentiality if specified under the contract.

2. Changes in terms of engagement:
   - There might be several events where the auditors may need to change its audit terms, but the change must be reasonable and favoring both parties on the side.
   - During the audit process if the appointing authority requests the auditor to change the scope of engagement, resulting in a lower level of assurance, the auditor shall re-evaluate the proposed changes and consider the appropriateness of carrying out the same.

3. Audit Planning
   The Auditor shall make audit plan to conduct audit as per the terms of Audit Engagement.
   Audit planning means establishing and developing an overall audit process, including but not limited to:
   a. Identification of broad audit areas;
   b. Seeking previous audit findings and observations from the Management and the Predecessor or Previous Auditor, in case of change of Auditor;
   c. Determination of subject matters and audit areas requiring special attention, when considered necessary;
   d. Risk Assessment and Materiality;
   e. Audit technique;

1 Source: Discussion paper on Governance in Commercial Banks in India issued by RBI dated 11th June, 2020.
f. Allocation of audit resources for the audit; and
g. Preparation of audit schedule.

- The audit planning should be framed in such a way that appropriate attention is provided to crucial areas of the audit and significant issues get identified in a timely manner.

- The Auditor must have a professional scepticism approach while conducting the audit and the auditor may make necessary changes, if circumstances so warrant.

4. Third Party Report or Opinion
   The Auditor shall, if necessary and feasible, carry out a supplemental test to check veracity of the Third Party report or opinion.

5. Audit Risks
   The Auditor shall evaluate high risk areas and activities of the Auditee relating to:
   a. Internal control systems and processes of the Auditee for adherence to the constitutional documents, applicable laws, acts, rules, regulations and standards;
   b. Transparency, prudence and probity; and
   c. Changes or Attrition in the compliance team and frequency of such changes and attrition.

6. Record Keeping and Retention
   The auditor must ensure that the audit documents must be collated for records within a period of 45 days from the date of signing of Auditor’s Report and the same be maintained in physical or electronic form and retained for a period of 8 years from the date of signing of Auditor’s Report.

CONCLUSION:
Section 204 of The Companies Act, 2013 has opened up a significant area of practice for company secretaries. It creates challenges and greater responsibility for company secretaries and poses a great challenge to justify fully, the faith and confidence reposed in them and ensures better scope for stakeholders as it enhances the credibility of the performance of any organization in the considerable course of time and process. Hence, it can be concluded that, Secretarial Audit is a stepping stone towards good governance.

*****
SEBI’s consultation paper on LODR Regulations – Its impact on listed entities

INTRODUCTION
Corporate Governance is one of the important pillars for managing a corporate entity. It ensures transparency and ethical behavior in dealing with laws, procedures and practices while making informed managerial decisions for the benefit of all the stakeholders. Corporate governance in India has evolved over the years starting from 1991 when globalization, economic liberalization and privatization led India to initiate reforms to keep pace with the developments all over the world. In terms of corporate governance for listed entities in India, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (‘Regulations/LODR’), is the most fundamental document ensuring the management of these companies in a fair manner keeping in view the expectations of the investors.

The Regulations introduced in 2015 underwent many changes to keep up with the best practices of corporate governance. Apart from the Regulations, the Companies Act, 2013 (the ‘Act’) also prescribes certain norms to ensure corporates adhere to best practices of governance in conducting their business. Due to the multi-law structure of administration in the country, there arise instances where inconsistencies crop up between two laws and such scenarios also lead to enhanced compliance burden on companies. To address such issues and to harmonize the Regulations with the Act, SEBI, on September 11, 2020, issued a consultation paper for public comments.

SEBI has categorized the proposed amendments in three parts viz,

I. Amendments to strengthen corporate governance practices and disclosure requirements (Annexure A)
II. Amendments to ease the compliance burden on listed entities (Annexure B)
III. Other amendments *inter-alia* to maintain consistency within the Regulations, harmonize the Regulations with the Act. (Annexure C)

This article tries to analyze the proposed amendments and the impact it will have on the compliances by listed entities.

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<table>
<thead>
<tr>
<th>Sub-regulation/Clause / Schedule</th>
<th>Current Provision in the Regulations</th>
<th>Proposed changes</th>
<th>Comments</th>
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</thead>
<tbody>
<tr>
<td>3</td>
<td>Currently, the Regulations apply to an entity that has any of the designated securities listed on the recognized stock exchange.</td>
<td>It is proposed that the Regulations which become applicable to listed entities based on market capitalization criteria shall continue to apply even if they fall below such thresholds.</td>
<td>The proposed amendment is a welcome move towards strengthening corporate governance. Emphasis has been made on the continued application of best governance practices.</td>
</tr>
<tr>
<td>2nd proviso to regulation 15(2)(a)</td>
<td>The said regulation deals with the applicability of corporate governance provisions to listed entities satisfying certain threshold criteria.</td>
<td></td>
<td>The change is in alignment with regulation 3 and is a measure towards strengthening corporate governance.</td>
</tr>
<tr>
<td>24(5)</td>
<td>At present, the provision gets triggered only if the listed entity dilutes its holding in the subsidiary company to less than 50% or ceases to exercise control over the said subsidiary.</td>
<td>The proposed amendment is aimed at giving clarity to prevent misuse of the provision by inserting the words “less than or equal to 50%”.</td>
<td>This is a good move towards strengthening corporate governance. With this proposed amendment, without special resolution passed at the General Meeting, the listed entity will not be able to reduce its shareholding in a material subsidiary below or equal to fifty percent. Given the current LODR provisions, the listed entities may reduce their shareholding upto 50% resulting in such subsidiary ceasing to be material by passing an ordinary resolution.</td>
</tr>
</tbody>
</table>
This Regulation prescribes that disclosure of information must be made to stock exchange promptly.

There are certain events prescribed under Schedule III which require disclosure to be made within 24 hours and some which mandate disclosure within 30 minutes of conclusion of the Board meeting.

It is proposed that disclosure of approval of financial results be made to the stock exchange within 30 minutes of approval of the Board.

This is a step in the right direction to enhance corporate governance.

This will minimize the chance of leakage of financial results before the same is disclosed to the stock exchanges.

However, this may result in administrative inconvenience.

Presently top 500 listed entities based on market capitalization are required to formulate and disclose the dividend distribution policy on their website and in the annual report.

It is proposed to extend this requirement to top 1000 listed entities based on market capitalization.

This is a step towards better corporate governance norms as it brings an element of predictability for the investors as to what they can expect.

Currently, it deals with the disclosures about any scheme of corporate debt restructuring.

The Corporate Debt Restructuring scheme was withdrawn by RBI and replaced with the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019. This disclosure is accordingly aligned with the above changes made by the RBI.

The disclosure is for aligning with the current provisions notified by the RBI. The same needs to be disclosed without applicability of materiality thresholds.

As rightly pointed out by SEBI, it is not frequently that a listed entity changes its RTA. In light of the same, it is a step towards reducing compliance burden on listed entities.

### ANNEXURE B

<table>
<thead>
<tr>
<th>Sub-regulation/ Clause / Schedule</th>
<th>Current Provision in the LODR</th>
<th>Proposed changes</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 (3)</td>
<td>Currently, the listed entity is required to submit a compliance certificate with regards to the share transfer activity duly signed by the compliance officer of the listed entity and the authorized representative of the share transfer agent within 1</td>
<td>It is proposed that the listed entity would be required to submit such compliance certificate within 30 days of the end of the financial year.</td>
<td>As rightly pointed out by SEBI, it is not frequently that a listed entity changes its RTA. In light of the same, it is a step towards reducing compliance burden on listed entities.</td>
</tr>
<tr>
<td>Proviso to regulation 12</td>
<td>The regulation prescribes that where it is not possible to use electronic mode of payment, ‘payable-at-par’ warrants/cheques may be used. It also states that where the amount payable as dividends exceeds ₹1500, the ‘payable-at-par’ warrants or cheques shall be sent by speed post.</td>
<td>It is proposed that the mandatory requirement of sending ‘payable-at-par’ warrants or cheques by speed post be removed to facilitate payment by other possible modes too.</td>
<td>A welcome move for easing compliance burden on listed entities while paying out dividends, interest, redemption, or repayment proceeds. The Companies may use other modes of dispatching such warrants/cheques.</td>
</tr>
<tr>
<td>39(3)</td>
<td>The listed entity is required to submit information regarding loss of share certificates and issue of the duplicate certificates, to the stock exchange within two days of its getting information.</td>
<td>It is proposed to make the disclosure of the loss of share certificate to the stock exchange quarterly compliance and to align with the submission of investor grievance as prescribed under regulation 13(3).</td>
<td>Considering that there is no trading or transfer of physical shares on the floor of the stock exchanges, the proposed amendment will ease compliance burden on listed entities.</td>
</tr>
<tr>
<td>40(9)</td>
<td>Presently, the regulation prescribes that the listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, produce a certificate from PCS within 1 month of the end of each half of the financial year, certifying that all certificates have been issued within 30 days of the date of lodgement for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls/allotment monies.</td>
<td>In line with regulation 7(3), it is proposed to make this disclosure annual compliance because the number of shareholders holding shares in physical form is negligible.</td>
<td>The rationale provided by SEBI for carrying out the proposed amendment seems to be in sync with current scenario. Accordingly, this will ease compliance burden on listed entities.</td>
</tr>
<tr>
<td>45 (3)</td>
<td>Presently, a listed entity intending to change its name is required to submit a certificate from PCA certifying compliance with the provisions of regulation 45.</td>
<td>It is proposed that such a compliance certificate may now be obtained from PCA or PCS and the same be annexed to the explanatory statement thereby doing away with separate approval.</td>
<td>The proposed amendment does away with the prior approval to be taken from stock exchanges for change of name. However, the listed entities still need to procure a certification regarding compliance with regulation 45(1) which will form part of the explanatory statement in the notice seeking approval.</td>
</tr>
</tbody>
</table>
Currently, a newspaper advertisement is required to be published for Board meetings where financial results or any statement of deviation under regulation 32 will be discussed/placed. The said requirement is proposed to be deleted. This will not only reduce compliance burden but also reduce costs.

Further, it may be noted that the dispensation is only with regards to publishing Board meeting notice and the listed entities will have to continue to publish financial results in newspapers as specified in regulation 47(1)(b).

### ANNEXURE C

<table>
<thead>
<tr>
<th>Sub-regulation/Clause / Schedule</th>
<th>Current Provision in the LODR</th>
<th>Proposed changes</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>2(1)(ib)</td>
<td>No provision</td>
<td>‘firm’ shall have the same meaning as assigned to it under the Partnership Act, 1932, and LLP Act, 2008.</td>
<td>The proposed insertion defines the term referred to in the Regulation and provides clarity.</td>
</tr>
<tr>
<td>2(1) (zn)</td>
<td>No provision</td>
<td>‘working days’ means working days of the stock exchange where the securities of the entity are listed.</td>
<td>The proposed insertion defines the term referred to in the Regulation and provides clarity.</td>
</tr>
<tr>
<td>16</td>
<td>The current provision reads as follows: “none of whose relatives has or had pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed from time to time, whichever is lower, during the two immediately preceding financial years or during the current financial year”</td>
<td>The amendment has been proposed to align the definition of Independent Director with that of the definition as provided under the Act.</td>
<td>The proposed amendment is consistent with the provisions of Act. However, the proposed amendment retains the lower threshold prescribed at present for pecuniary relationship of relatives.</td>
</tr>
<tr>
<td>16(1) (vi)</td>
<td>(vi) who, neither himself, nor whose relative(s) —</td>
<td></td>
<td>The proposed amendment is consistent with the provisions of the Act.</td>
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<td></td>
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</tr>
<tr>
<td>(A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;</td>
<td></td>
<td>The proposed amendment is a welcome move and will cause ease of reference for the listed entities.</td>
<td></td>
</tr>
<tr>
<td>24A</td>
<td>Presently, every listed entity and its material subsidiary is required to annex secretarial audit report in its annual report.</td>
<td>It is proposed that along with the secretarial audit report, the annual secretarial compliance report shall also be annexed in the annual report. The timeline as prescribed in the SEBI Circular dated February 8, 2019, is also proposed to be included in the Regulations.</td>
<td></td>
</tr>
<tr>
<td>26 (4)</td>
<td>Currently, Non-executive directors are required to disclose their shareholding, held either by them or on beneficial basis for any other persons in the listed entity in which they are proposed to be appointed as directors, in the notice to the general meeting called for appointment of such director. Proposed to be deleted</td>
<td>Overlapping provision with regulation 36(3)(e) and accordingly proposed to be deleted by SEBI.</td>
<td></td>
</tr>
<tr>
<td>36(3)</td>
<td>This regulation prescribes disclosures to be made in case of appointment/ re-appointment of a director ..... (b) nature of his expertise in specific functional areas; ..... (e) shareholding of non-executive directors.</td>
<td>It is proposed to include the shareholding of non-executive directors in the listed entity, including as a beneficial owner to be disclosed. The term ‘his’ to be deleted. The proposed amendment provides better clarity. The term ‘his’ being superfluous is proposed to be deleted and is consistent with maintaining gender neutrality.</td>
<td></td>
</tr>
<tr>
<td>27(2)(a)</td>
<td>The listed entity shall submit a quarterly compliance report on corporate governance in</td>
<td>It is proposed to enhance the time limit for filing the The proposed amendment will ensure uniformity in</td>
<td></td>
</tr>
<tr>
<td>29(1)(f)</td>
<td>Currently, the listed entity is required to give prior intimation to stock exchange about the meeting of the board of directors in which the proposal for declaration of bonus securities is going to be discussed where such proposal is communicated to the board of directors as part of the agenda.</td>
<td>It is proposed that prior intimation would now require to be given even if the said proposal does not form part of the agenda.</td>
<td>The proposed amendment is in line with the intent provided in the Report issued by Kotak Committee. Accordingly, whether bonus issue forms part of the Board agenda or not, advance intimation to stock exchanges needs to be given.</td>
</tr>
<tr>
<td>44 (3)</td>
<td>Currently, the voting results are to be submitted with the stock exchanges within 48 hours from the conclusion of general meeting.</td>
<td>It is proposed to extend the timeline from 48 hours to 2 working days.</td>
<td>This will reduce practical difficulties faced by the listed entities while disclosing the voting results of general meeting.</td>
</tr>
<tr>
<td>46(2) (s)</td>
<td>Currently, the regulation prescribes that separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, be uploaded at least 21 days before the date of the annual general meeting which has been called to inter alia consider accounts of that financial year.</td>
<td>It is proposed that (a) where a foreign subsidiary of the listed entity is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, it will be sufficient compliance if consolidated financial statement of such foreign subsidiary is placed on the website of the listed entity; (b) where a foreign subsidiary of the listed entity is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed entity may place such unaudited financial statement on its website. A translated copy of the financials also needs to be placed on the website in case if the same is not in English language.</td>
<td>The said amendment has been proposed to align the provision with section 136 of the Act and also to give effect to the informal guidance issued by SEBI on May 30, 2019, in the matter of HCL Technologies Ltd.</td>
</tr>
<tr>
<td>46 (2)</td>
<td>Disclosure of information by the listed entity under a separate section on its website.</td>
<td>It is proposed that the annual return as prescribed under section 92 of the Act and disclosures under regulation 30(8) shall also be displayed on the website.</td>
<td>The requirement to upload annual return is consistent with requirements under the Act. Further, for consistency, disclosures filed under regulation 30(8) is specifically proposed to be included.</td>
</tr>
<tr>
<td>Schedule V</td>
<td>Schedule V Part C of the Regulations prescribe the contents of the Corporate Governance Report</td>
<td>The proposed amendment seeks to rearrange clause 5 on remuneration to directors and clause 6 on stakeholders’ grievance committee to bring together disclosure of details related to various committees in the Corporate Governance Report. Further, a new clause 5A has been inserted which requires the listed companies to provide certain details related to the risk management committee (RMC).</td>
<td>The listed entities will have to include details related to RMC and also specify recommendations and action to be taken to address risk related issues, its implementation and deviations, if any.</td>
</tr>
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*****
Corporate Restructuring – Key for Speedy Economic Revival

CS Amar Kakaria                           CS Pankaj Surana

Due to novel Covid-19 pandemic, there has been massive economic slowdown across the globe and India is also not an exception. Indian economy has shrunk by 23.9% in June quarter and the situation is likely to remain challenging in the current year. Business enterprises across the world are struggling for survival and they are looking for various strategies for revival. Corporate restructuring can certainly lend them a helping hand and prosper in the long term while reaping benefits of customised growth strategy to suit their requirements. It can be either in the form of financial or organisational restructuring, however, in both the cases the ultimate strategy should be to improve overall value and efficiency of the organisation.

Major Factors Impacting Strategy:

Each organisation is unique and hence, it may have to adopt different strategy than its peers. Success of the corporate restructuring process is dependent upon the positive outcome whereby time and costs can be saved however, it may get impacted due to many factors viz. outstanding liabilities, level of non-compliances, support from stakeholders, legal restrictions, etc.

Usually, corporate restructuring initiative is undertaken when the company is in financial jeopardy due to different operational and other problems. In order to avoid any contingencies and for getting desired results, following key factors need to be kept in mind while launching corporate restructuring process:

1. Organisational legacy and core value
2. Accounting practices and policy
3. Taxation and stamp duty cost
4. Human and cultural synergy
5. Legal and statutory aspect
6. Valuation and funding
7. Competitive scenario
8. Integration issues
Alternate Strategies for Corporate Restructuring:

Diverse strategies have been regularly adopted by different companies across the world for improving organisational efficiency and strengthening capital structure in order to create value for all stakeholders. Following are 10 popular corporate restructuring strategies which are adopted in India:

1) Merger: Under this option, 2 or more companies merge or amalgamate together and form a new company with the approval of Hon’ble National Company Law Tribunal (NCLT). Usually, the consideration is payable in the form of exchange of shares for getting benefits under Indian Tax laws.

2) Fast Track Merger: Considering the ever-increasing workload on NCLT, Indian Government has introduced ‘Fast Track Merger’ scheme in 2016 and now, certain categories of companies can be amalgamated with the approval of Regional Director without even approaching NCLT. It not only saves costs but also puts entire restructuring process on fast track.

3) Demerger: In case of a company which has 2 or more undertakings, any undertaking can be demerged into a resulting company with the approval of NCLT. In order to get tax benefits, the consideration is usually in the form of exchange of shares instead of cash payment.

4) Reverse Merger: In order to avail listing benefits, a large unlisted company gets merged with small listed company and get itself listed without opting for IPO. Given the listing status, prior approval of SEBI is needed. Reverse merger has been extremely popular strategy in various developed countries including USA but it is also gaining popularity in India. Further, there have been multiple instances of reverse merger in order to enjoy tax benefits or for business consolidation purpose.

5) Takeover: It is also known as acquisition under which one company takes over majority stake as well as management control of another company, however, both the companies continue to function separately. While acquiring a listed company, the acquirer has to comply with SEBI Takeover Code.

6) Management Buy Out: It is a transaction where the company’s management executives buy out the assets or operations of the company which they manage. Such strategy is appealing to professional managers because of superior potential rewards as well as control due to ownership rather than employment and usually, external funding is available for promising companies.

7) Slump Sale: Each asset is sold separately in case of itemized sale, however, in case of slump sale, the company sells entire undertaking on lumpsum basis irrespective of value of individual assets or liabilities. Usually, the consideration is settled by cash instead of issuing shares and so, direct liquidity is possible.

8) Divestment: An action of selling out stake or liquidating any subsidiary is known as divestment. In order to meet budgetary deficits, government often divests stakes in public sector undertakings.

9) Joint Venture: Two or more companies may form a new entity in joint venture to undertake commercial activity together with pre-defined roles and responsibilities of each party. Capital is contributed in mutually agreed proportion by all the parties and thereafter, profits & losses are also shared in similar proportion.

10) Strategic Alliance: Under such arrangements, 2 or more entities come together to collaborate with each other in order to achieve certain goals. In fact, there has been a new trend of ‘Peer Partnership’ in order to survive where competitors are entering into an informal alliance by limiting their presence / activities to aptly utilise available resources while reducing overall costs.
Primary Rationale & Success Stories:

Different companies have undertaken corporate restructuring exercise for diverse reasons, however, all of them had a common goal of maximizing value for all their stakeholders. Following can be primary rationale for such initiative:

1) Simplified Structure: Instead of having too many business verticals across multiple entities, consolidation can help to have a simplified group structure where control can be exercised in a better and timely manner. Example: TATA Group’s ongoing initiative for group consolidation for reducing business verticals

2) Benefits of Synergy: In some cases, the value of merged entity gets more than combined value of individual entities which primarily, happens due to premium for synergy. Similarly, benefits of reverse synergy can be tapped with demerger. Example: LafargeHolcim became largest cement player globally in 2016 after merger of Lafarge and Holcim

3) Change of Strategy: Due to continuous evolution, core activities of company often undergo changes. Sometimes, a particular undertaking may become redundant and in order to focus on core function, it is essential to exit from it. Example: L&T’s sale of electrical & automation business to Schneider

4) Statutory Requirements: In certain cases, there may be statutory restrictions to carry out 2 or more businesses in similar entity and so, restructuring has to be done in order to avoid any conflict with the regulators. Example: RBI did not allow banks to provide non-banking services like insurance coverage and so, they floated new insurance companies in joint venture with multinational players

5) Cashflow Management: Divesting an unproductive asset or undertaking can help the organisation to generate cashflows which further, can help it in capital restructuring for better yields. Example: Air India bifurcated aviation business from real estate and also reduced corresponding liabilities

6) Inadequate Profitability: A particular undertaking may find it difficult to generate adequate profits to cover cost of capital and thereby, resulting into economic losses. Unless corrective action is taken in a timely manner, such undertaking can bring down overall profitability of organisation. Example: Sale of consumer mobile business of Tata Teleservices to Bharti Airtel

Major Benefits of Successful Restructuring:

Business enterprises having corporate structure may have better chances of successfully undertaking corporate restructuring exercise but given the extremely low level of corporatisation in India, Company Secretaries will have to actively spread awareness among the businessmen about various benefits of corporatisation. Various benefits can be enjoyed with proper restructuring process:

- Debt refinancing with low interest
- Outsourcing of secondary functions
- Changes in corporate management policy
- Relocating operations to low-cost destinations
- Entitlement of benefits like subsidies / tax concessions
- Raising funds by selling off non-core assets / undertakings
- Improvement in financial standing with stronger balance sheet
- Renegotiating contracts with vendors and suppliers to reduce overheads
- Optimisation of human capital with reduction in non-productive workforce
- Conducting public awareness campaign to reposition company with customers
Crucial Role of Company Secretaries:

Given the extra-ordinary economic turmoil, there is a need to find economical solution in a time bound manner. With the domain expertise in corporate & allied laws besides finance, Company Secretaries can play a key role across entire value cycle:

- Customise proper restructuring strategy for the client
- Devising suitable transaction structure and drafting various documents keeping in mind overall objective
- Identification of suitable company, if any to meet the requirements of client
- Carrying out due diligence to assess liabilities and level of compliance
- Assisting the management in carrying out valuation and getting opinions, if needed from other professional agencies
- Addressing queries raised by the regulators and get their approval, if needed
- Complying with various provisions under different corporate & other laws to give effect to corporate restructuring

Conclusion:

Economic revival is directly linked with survival as well as revival of business enterprises and therefore, they must have to quickly grow by keeping aside all ongoing challenges. Corporate restructuring can positively help the companies to get desired results in a timebound manner, however, careful attention needs to be given to prevailing economic trends, competitive scenario and regulatory policies.

With sound auditing framework and improved corporate governance standards, Indian corporates are best placed to grow globally and if they systematically adopt corporate restructuring strategies then all their stakeholders will be rewarded handsomely. However, in the event of any lapses in execution, the companies may have to bear very high costs and it may even have an adverse impact on its existence. Therefore, precautionary approach is recommended while executing such strategies under the supervision of experienced corporate professionals.

“Without strategy, execution is aimless. Without execution, strategy is useless.” – Morris Chang

*****
SEBI permits trading in defaulted debt securities
Increases payment related disclosure requirements for Issuers & DTs

Burhanuddin Dohadwala, Manager & Henil Shah, Assistant Manager | Corporate Law Division | Vinod Kothari and Company

Introduction
SEBI, vide circular dated June 23, 2020 has issued operational framework for transactions in defaulted debt securities post maturity date/ redemption date (‘SEBI Circular’) which shall be effective from July 01, 2020.

a. Defaulted debt securities mean debt securities where redemption amount has not been paid on maturity/ redemption date.

b. Position prior to SEBI Circular:
   • The stock exchanges would suspend trading/reporting of trades on defaulted debt securities before the maturity date;
   • Depositories would impose restriction on off-market transfers on maturity date that restricted transfers on and after the maturity date.

c. Position from July 1, 2020:

SEBI has decided to lift the aforesaid restrictions on defaulted debt securities as under:
   • No transaction in defaulted debt securities two working days prior to maturity/ redemption date;
   • On maturity/ redemption date, transaction to be temporarily restricted till determination of status of payment.

Disclosure obligations has been prescribed for Issuers & Debenture Trustees (DTs) to be made to Depositories and Stock Exchange (s) (SE) as discussed in detail in this article along with the timelines prescribed under the SEBI Circular as Annexure-1. Necessary systems and infrastructure for implementation of the SEBI Circular needs to be completed by June 29, 2020.

INTIMATION OF STATUS OF PAYMENT BY EVERY ISSUER

With effect from July 01, 2020
**Initial Disclosure:** Issuers in default before the issuance of the circular shall intimate status of payment

**Event based disclosure:** Intimation of status of payment after payment/redemption date.

Within **5 WD** (By July 7) To: Within **1 WD**
- Stock Exchange;
- Depositories;
- Debenture Trustee;

**Note:**
- Intimation to be first given to SE and Depositories.
- While intimating the status of payment to DTs, issuer shall also intimate that they have informed the status of payment to SEs and Depositories.
- WD means working day of the SE where the debt security is listed.
- The intimation prescribed under the SEBI Circular is over and above the intimation made to SE under Reg. 57 (1) of Listing Regulations after payment of interest and principal.
- There exists lack of clarity on whether the initial disclosure is required to be given by issuer confirming that there is no default debt security.

<table>
<thead>
<tr>
<th>Intimation under SEBI Circular</th>
<th>Intimation under Reg. 57 (1) of Listing Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intimation is only applicable at the time of redemption of debt security</td>
<td>Intimation is provided on fulfilment of payment obligations whether principle or interest.</td>
</tr>
<tr>
<td>Status is to be provided within 1 working day of the redemption</td>
<td>Within 2 working days of payment or interest</td>
</tr>
<tr>
<td>Status to be provided to stock exchange, debenture trustee and depositories</td>
<td>Intimation is only to be provided to Stock exchange.</td>
</tr>
</tbody>
</table>

**FURNISHING PAYMENT RELATED INFORMATION TO DTS**

a. With effect from July 1, 2020 at the time of executing Debenture Trust Deed issuers are required to:
   - provide bank details from which it proposes to pay the redemption amount;
   - pre-authorise DTs to seek redemption related information from the Issuer’s bank;
   - Inform any change in bank details within 1 WD of such change.

b. For existing debt securities
   - Pre-authorise DTs within 60 days from July 1, 2020 i.e. by August 29, 2020

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EFFECT OF PRE-AUTHORISATION TO DTS

Where the issuer fails to intimate status of payment as discussed above, the DTs can seek status of payment from the issuer and/or conduct independent assessment from banks, investors, rating agencies etc. Thereafter, the DTs shall intimate status of payment of debt securities within 9WD of maturity/re redemption date.

FAILURE TO FURNISH STATUS OF PAYMENT

Transaction in debt securities shall continue to be restricted until intimation is received from Issuer/DTs.

CONTINUOUS ASSESSMENT OF DEFAULT STATUS

In case of default till either the Issuer has been liquidated and money has been realised after completion of recovery proceedings or full payment on these securities is made by Issuer:

ANNUAL INTIMATION BY ISSUER

Once a default is reported in respect to redemption of debentures, updated status relating to security shall be provided in the manner explained below.

In case of failure to intimate by Issuer as well as DTs, transactions in such debt securities shall be restricted from 8th working day of April of that Financial year, until any further intimation is received.

EVENT BASED DISCLOSURE BY ISSUER

Any material development (including restructuring, initiation of IBC proceedings, repayment of securities) impacting the status of the debt securities, shall be intimated to the stock exchange and depositories within 1 working day of such development. The requirement is not new as the same is required even under the Listing Regulations.
CONCLUSION

The operational framework will enable SE and Depository to obtain timely information on payment status of debt securities (including defaulted debt securities) and accordingly, permit/restrict trades, flag/extinguish ISIN and intimate trade transaction to the parties.

The issuers are required to ensure timely disclosure to enable SE and Depository to comply with the SEBI Circular.

ANNEXURE-1
TABULAR REPRESENTATION OF TIMELINES PROVIDED UNDER THE SEBI CIRCULAR

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Event</th>
<th>Activity to be taken</th>
<th>Timeline (working days)</th>
<th>By</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Execution of Debenture trust deed</td>
<td>Pre authorization to seek debt redemption payment related information from issuer’s bank</td>
<td>At the time of execution of the deed</td>
<td>Issuer</td>
<td>Debenture Trustee(s)</td>
</tr>
<tr>
<td>2.</td>
<td>Any change in bank details of issuer for making debt redemption payment</td>
<td>Information regarding updated bank details</td>
<td>Within 1 working day of event</td>
<td>Issuer</td>
<td>Debenture Trustee(s)</td>
</tr>
<tr>
<td>3.</td>
<td>Creation of ISIN / Listing of Debt Securities</td>
<td>Intimation of Redemption date</td>
<td>Issuer</td>
<td>1. Depositories 2. Stock Exchange(s)</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Redemption/ Maturity date (T day)</td>
<td>Non acceptance of trades for reporting/settlement</td>
<td>T-2</td>
<td>Stock Exchange -</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td>Temporary restriction on transaction in ISIN</td>
<td>T</td>
<td>Depositor -</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td></td>
<td>Intimate Status of payment of debt securities</td>
<td>T+1</td>
<td>Issuer 1. Stock Exchange(s) 2. Depositories 3. Debenture Trustee(s)</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Non receipt of status of payment from issuer</td>
<td>Independent Assessment of Payment Status</td>
<td>T+2 to T+9</td>
<td>Debenture Trustee(s) -</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td></td>
<td>Intimate Status of payment of debt securities</td>
<td>By T+9</td>
<td>1. Stock Exchange(s) 2. Depositories</td>
<td></td>
</tr>
</tbody>
</table>
### Continuous assessment of payment

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<table>
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</thead>
<tbody>
<tr>
<td>9.</td>
<td>Receipt of information regarding full payment</td>
<td>Obligations as per para 9 of Annexure A</td>
<td>Obligations as per para 9 of Annexure A of the SEBI Circular.</td>
<td>1. Depositories 2. Stock Exchanges</td>
</tr>
<tr>
<td>10.</td>
<td>Receipt of information regarding non payment</td>
<td>Obligations as per para 4-8 of Annexure A</td>
<td></td>
<td>1. Depositories 2. Stock Exchanges</td>
</tr>
</tbody>
</table>

### Continuous assessment of payment

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<tbody>
<tr>
<td>11.</td>
<td>Any development that impacts the status of default of the concerned debt securities (including restructuring of debt securities, IBC proceedings, its repayment, etc.)</td>
<td>Intimate updated Status of payment of debt securities</td>
<td>Within 1 working day of event</td>
<td>Issuer or Debenture Trustee(s)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1. Stock Exchange(s) 2. Depositories</td>
</tr>
<tr>
<td>12.</td>
<td>Continuous assessment of Payment</td>
<td>Intimate Status of payment of debt securities</td>
<td>2nd working day of April every financial year</td>
<td>Issuer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1. Stock Exchange(s) 2. Depositories 3. Debenture Trustee(s)</td>
</tr>
<tr>
<td>13.</td>
<td>Non receipt of status of payment from Issuer</td>
<td>Independent Assessment of Payment Status</td>
<td>3rd working day of April—7th working day of April of every financial year</td>
<td>Debenture Trustee(s)</td>
</tr>
<tr>
<td>14.</td>
<td></td>
<td>Intimate Status of payment of debt securities</td>
<td>Within 7 working days of April of every financial year</td>
<td>1. Stock Exchange(s) 2. Depositories</td>
</tr>
</tbody>
</table>
Health is Wealth

CS Nachiket Sohani
Company Secretary & Compliance Officer
Starlog Enterprises Limited

Mahatma Gandhi, our father of nation, has said that, ‘It is health that is real wealth and not the pieces of gold and silver’. Generally, people consider ‘health’ as the state of body that is free of any kind of diseases. But in reality, for leading a healthy life, a person must be fit and fine both physically and mentally. A person with a good health can enjoy his wealth. However, a wealthy person who is unhealthy cannot enjoy his wealth. Thus, it is clear that the true wealth lies in having a good health and hence, it is rightly said that ‘Health is Wealth’.

Meaning of ‘Health’ and ‘Wealth’

Let us first understand the meaning of the words ‘Health’ and ‘Wealth’.

‘Health’ means a condition of a person’s body or mind. In other words, it means state of being well and free from illness.

‘Wealth’ means the state of being rich.

Reference of importance of health explained in the ancient Indian scriptures

A good health is a gift of God to the human beings. A good health is the secret of living long and prosperous life. The importance of good health has been explained in various ancient Indian scriptures such as Vedas, Upanishads, Samhitas, Puranas, Sutras etc. In the holy scripture of Shrimad Bhagwad Gita, Lord Krishna has explained the importance of good health and balanced life. He has explained the same to Arjuna in the Shloka No. 17 of the Chapter No. 6, which reads as follows:

"युक्ताहारविहाराः युक्ततांश्चतस्तस्य कर्मसु।
युक्ताश्िपाबोधस्य योग भवति दुःखुः।"

It means “the one, whose diet and movements are balanced, whose actions are proper; whose hours of sleeping and waking up are regular, and who follows the path of meditation, is the destroyer of pain or unhappiness”.

What is ‘Huge Wealth’?

Since ancient times, a person is considered to be rich only if he possesses huge wealth. The term ‘huge wealth’ includes gold, silver, diamond & other precious stones, owing large parcels of agricultural land, owner of a factory, owner of a house comprising of many rooms etc. However, the concept of maintaining good health was never used as a benchmark for measuring the wealth of a person. This is because there was very little awareness about maintaining good health. A healthy person can achieve many things in his life such as money, education, friendships, good relationships, professional opportunities and satisfaction. On the contrary, a person possessing all the wealth but not a good health will not be able to enjoy his wealth.
Attitude towards Health

In today’s world, many people conveniently ignore their health. This is because of various factors such as lack of awareness, availability of better medical facilities, temptation for junk food, unwillingness to eat healthy food etc.

Today due to advancement of medical science and technology, most of the diseases are curable. This has resulted in people becoming more ignorant towards maintaining their health. This attitude in turn results in lack of attitude towards good health among the future generations. There is no one today who can create awareness of health among the children as their parents are only not aware about it.

Many people believe that we should enjoy our life and there should not be any restrictions on eating. However, such people do not understand that by ignoring their health their enjoyment of life reduces. They do not understand that the secret of enjoyment of life lies in being healthy.

Correlation between ‘Exercise’ and ‘Health’

It is said that ‘Exercise not only changes your body but it also changes your mind, your attitude and your mood’. A person whether rich or poor can achieve good health if he follows the methods of achieving and maintaining good health. Two important things required for good health are (i) control on food habits; and (ii) doing proper exercises. There are simple ways to achieve good health. A person need not pay exorbitant fees at the gyms or for any costly diet pattern recommended by the nutritionists. The primary requirement is self-awareness. Further, many people do not give importance to exercise. They give various excuses such as lack of place & time for exercise, body pain, feeling sleepy, will start it from tomorrow, etc. are given for not doing regular exercises. In fact, these excuses act as an invitation for many diseases and which ultimately results in unhealthy life. One can follow simple, effective and cost-beneficial methods of doing exercises to achieve good health. Some of the simple ways of doing exercise is to daily get up early in the morning; get freshened up and go out for a walk for about an hour. This not only ensures daily exercises but also results in discipline & awareness about one’s health. It also helps to increase the oxygen content of human body and also ensures adequate intake of Vitamin – D.

What is ‘Health of Mind’?

In today’s world, health includes mental health as well. It is said by Richard Davidson that ‘The key to a healthy life is having a healthy mind’. A healthy mind is the mother of good life. A person with healthy mind achieves success in all walks of his life including his academics, professional career, physical health, relationships etc. Such person is not vulnerable to various diseases as well. A person with healthy mind is widely accepted, recognized and respected by the society. Thus, we can say that ‘there is no greater wealth in this world than peace of mind’.

Stress – major threat to good health and wealth

Ideally, a person’s life should be full of happiness and satisfaction and with minimum stress. However, in today’s world, it might seem difficult. Stress has become an integral part of our life. There is stress in every aspect; be it personal or professional life. Stress does not exist where there is a peaceful mind but it exists where there is no peace of mind. Some of the factors that contribute to human stress are excess money, greed, anger, selfish attitude, over confidence, failure in relationships, comparisons, jealousy etc. It is should be noted that man is himself responsible for his stress i.e. stress is artificial in nature. William James has said that ‘The greatest weapon against stress is our ability to choose one thought over another’. If a person overpowers his stress, his life will be full of happiness and satisfaction. Such person also has good advantage to earn and enjoy his wealth.
Guarding against Complacency

It is said that ‘It is very easy to rise, but difficult to maintain’. Achieving good health might not be difficult but maintaining it is definitely difficult. People tend to get complacent when they feel they have achieved their targets. But they forget that complacency can destroy their achievements. Jay Mullings has said that, ‘Complacency is man’s biggest weakness; it creeps upon us when we least expect it’. People achieve good health by controlling their diet and doing exercises. But very few are able to maintain it. Many people get complacent after achieving good health and once again start their old habits. Such people do things only for the sake of doing them. By doing so, they neither get any satisfaction nor are able to live their life powerfully.

Importance of good health during the present Covid–19 pandemic

This year, due to the outbreak of Covid–19 pandemic, there has been a lot of emphasis on boosting one’s immunity. Various messages appeared in the media stating that people with good immunity were less prone to the Covid–19 virus. In other words, people with good immunity can recover faster than those with poor immunity. It should be noted that good immunity is not achieved overnight but it is an outcome of good exercise and balanced diet over the years. People who follow regular exercise pattern and also consume a balanced diet have strong immunity. Bad habits such as frequently eating junk food, drinking alcoholic drinks, smoking, sleeping late in the night, not doing routine exercises not only reduce the overall immunity but also result in invitation to various diseases. There are many people suffering from various diseases such as diabetes, cholesterol, blood – pressure, asthma etc. Such people do not have good immunity. Their immunity will not improve merely by consuming the available immunity boosters in market. Such people should also perform regular exercises in addition to consuming the immunity boosters as well.

The World Health Organization (“WHO”) has issued certain guidelines for the people all over the world for combating the menace of Covid-19. It includes wearing the prescribed mask, frequently washing hands using a sanitizer or soap and maintaining a social distance of at least six (6) feet i.e. two (2) metres. In addition to these guidelines, it is expected that people should also follow a proper balanced diet and regular exercises in order to protect themselves from Covid–19. This year, though Covid–19 has ruined the global economy and also human life, but it has made us realise the importance of maintaining good health.

Conclusion

Thus, we can conclude that mere possession of wealth is not sufficient. A person should have good health in order to enjoy his wealth. No person likes to carry any disease in his life. So, in order to avoid such difficult and troublesome life, every person should take all the necessary steps to maintain his good health and also should guard against any complacency. In addition to good health, a person with a healthy mind achieves more success in all walks of his life. We have been following the principle of ‘Health is Wealth’ for long time. In today’s world, this principle should also be read as ‘A Healthy Mind & Body is the secret of Real Wealth’.

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GUIDELINES FOR MEMBERS CONTRIBUTING ARTICLES TO BE PUBLISHED IN FOCUS

Western India Regional Council (“WIRC”) of The Institute of Company Secretaries of India (“ICSI”) is pleased to bring out a monthly magazine for corporate executives and other professionals, viz., “FOCUS” under the guidance of its newly formed Editorial Board. However, the Editorial Board wouldn’t be able to succeed in releasing FOCUS unless all the members of ICSI put in some efforts to make release of FOCUS a success. What better than writing articles for FOCUS and getting a ‘FOCUSSED’ recognition!

“Start writing, no matter what. The water does not flow until the faucet is turned on.” — Louis L’Amour

Well, if the above quote inspires you and you decide to author an article to be published in FOCUS, following are a few guidelines for authoring the articles for FOCUS (“Guidelines for FOCUS articles”).

The article must be original contribution of the author.

The article must be an exclusive contribution for FOCUS. The article must not have been published elsewhere and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.

The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.

An article can be jointly written by not more than two (2) members.

Case studies and research based articles with empirical data which would be of practical relevance to the company secretaries are welcome.

Unless a particular theme is provided by WIRC, articles on topics related to management, international trade, finance, tax and other related areas may be written and submitted for FOCUS.

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The article submitted for FOCUS shall be accompanied by a ‘Declaration-cum-Undertaking’ by the author(s) in the format as prescribed below.

Any contravention of the aforesaid guidelines and breach of the undertaking furnished by the authors would be viewed seriously by ICSI and ICSI is entitled to take necessary action as it may deem fit in such cases.

Looking forward for your contribution.

CS Rahul P. Sahasrabuddhe
Chairman
ICSI-WIRC
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The article titled as “________________________” as sent by me for publication in FOCUS is my original contribution and no portion of it has been adopted from any other source.
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The copyright in respect of my aforesaid article shall vest with ICSI and that if I intend to make use of the article in any other manner, I shall obtain prior permission from ICSI and shall abide by the conditions as may be imposed by ICSI, including without limitation disclosure of the original source i.e. FOCUS and its copyright owner.
The views expressed in my aforesaid article are mine and I solely shall be responsible for the views expressed in the article.

I undertake that I:

a. comply with the Guidelines for FOCUS;
b. shall abide by the decision of the Institute, i.e., whether this article will be published and / or will be published with modification / editing; and
c. shall be liable for any breach of this ‘Declaration-cum-Undertaking’.

___________________
Signature of Author

Date:
Place:
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The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000.

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Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt if paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

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