

# THE COMPANIES (AMENDMENT) ACT, 2020

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# About Us



- Vinod Kothari and Company, company secretaries, is a firm with over 30 years of vintage
  - Based out of Kolkata, New Delhi & Mumbai
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

***Our Organization's Credo:***

***Focus on capabilities; opportunities follow***

# Background

- Based on the recommendations of Company Law Committee
  - Report dated 18<sup>th</sup> November, 2019
  - Under the Chairmanship of Injeti Srinivas
- Committee was constituted for:
  - Re-categorisation of certain criminal compoundable offences under CA, 2013 to civil wrongs
  - For providing an in- house adjudication mechanism in order to reduce burden on courts and Tribunals
  - Introduction of an alternate framework to deal with certain offences
  - Recommending amendments in view of promoting the ease of doing business and ease of living

# Trail of events

Company Law  
Committee  
report on 18<sup>th</sup>  
November, 2019

CAB, 2020  
introduced to  
Lok Sabha on  
17<sup>th</sup> March, 2020

CAB, 2020  
passed by Lok  
Sabha on 19<sup>th</sup>  
September, 2020

CAB, 2020  
passed by Rajya  
Sabha on 22<sup>nd</sup>  
September, 2020

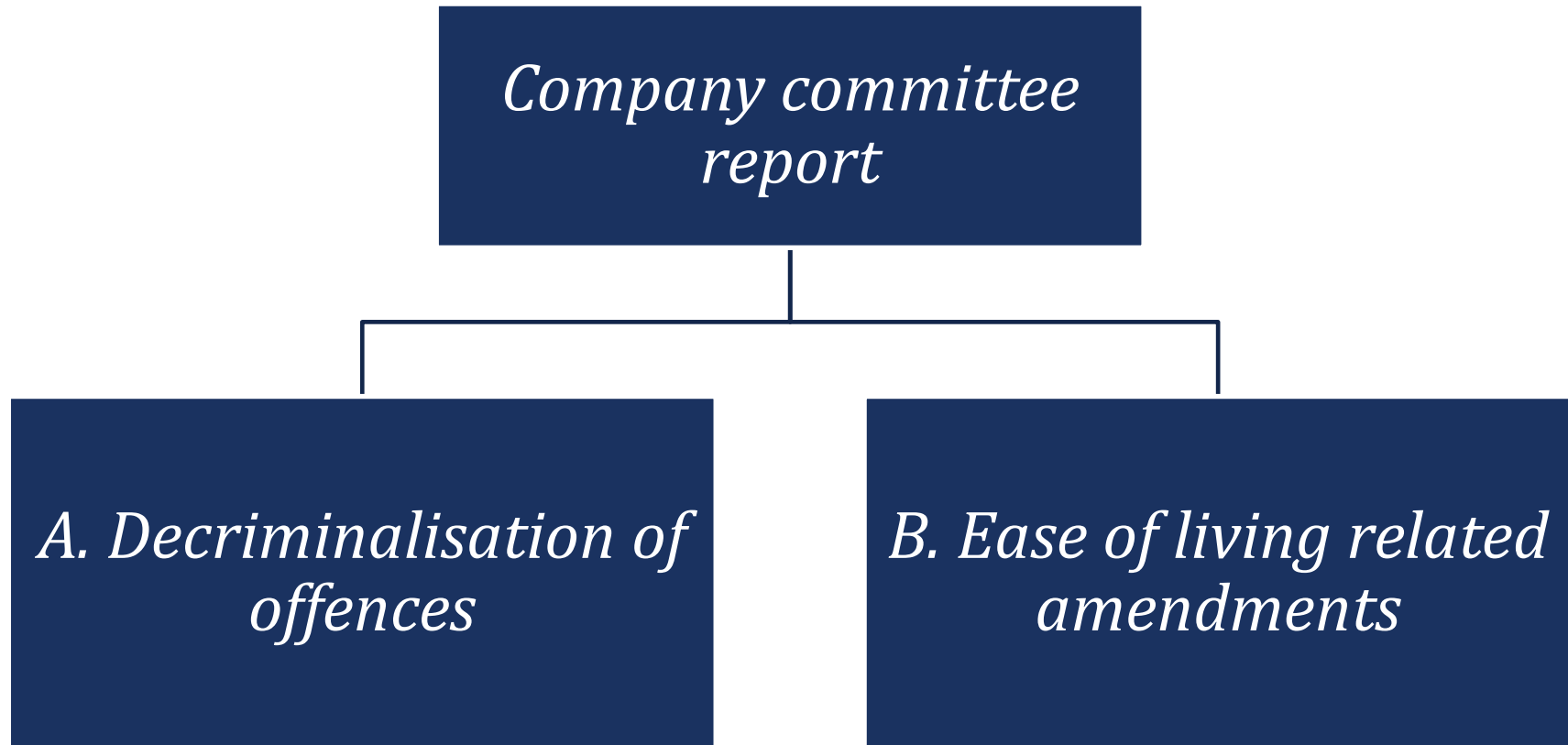
CAA, 2020  
received  
President's  
assent on 28<sup>th</sup>  
September, 2020

# Highlights of the amendments

- Decriminalisation of certain offences under CA 13
- COREX to COPP principle of CSR provisions
- Rebirth of concept of producer companies
- Exclusion of debt listed companies from compliance requirements
- Minimum remuneration payment extends to IDs & NEDs
- Periodical Financial Results for unlisted companies
- Various other changes to promote ease of living

*Note: Ministry will notify different dates for commencement of amended provisions.*

## Recommendations of the CLC



# A. AMENDMENTS RELATING TO DECRIMINALISATION OF OFFENCES

**Shift from fine to penalty**

**Omission of imprisonment provisions**

**Reduction in quantum of penalty**

**Omission of penal provisions**



# DECRIMINALISATION

FINE TO PENALTY



# Decriminalisation of Offences

- Shift of several provisions from fine/imprisonment to penalty
  - Remove criminality in 35 procedural defaults
  - Reduce imprisonment in 17 provisions restricting them to only fine
  - Bring down quantum of penalty for 6 offences
  - Omitted penal provisions for 6 offences

## Why shift from fine to penalty?

### FINE

- Is a criminal offence
- Offender shall be convicted by court of law
- May involve prosecution

Criminal liability leads to:

- Clogging courts
- Time consuming for corporates
- complexities of criminal trials

### PENALTY

- Is a civil offence
- Offender shall be punished by appropriate authority
- No legal proceedings involved
- Generally does not involve prosecution

# Doctrine of Attribution

**Criminal Offence**

Committing of act forbidden by law

Conducted with deliberate intent

Companies to be liable for criminal acts:

- a) Prove that there was commission of physical activity
- b) Conducted with intention

However, companies are artificial entity with no body or brain.

**Doctrine of Attribution:** *Criminal intention of doing wrongful act should be attributed to people who are in position to direct the mind of the Company*

Hence, through decriminalisation, balance between criminal and civil liabilities has been assured



SHIFTING FROM FINE TO PENALTY



# Shift of penal provisions- Fine to Penalty

Section	Existing provisions	Amended provisions
56(6) Transfer and Transmission of Securities	Where any default is made in complying with the provisions of sub-sections (1) to (5), <b>Fine on Company:</b> Min Rs. 25,000 Max Rs. 5 Lakhs and <b>Fine on Officer of the company in default:</b> Min- Rs.10,000 Max - Rs. 1 Lakhs.	Where any default is made in complying with the provisions of sub-sections (1) to (5), <b>the company and every officer of the company who is in default</b> shall be liable to a <b>penalty</b> of Rs. 50,000.
86(1) Punishment for Contravention.	If any company contravenes any provision of this Chapter, <b>Fine on Company:</b> Min- Rs. 1 Lakh Max- Rs. 10 Lakhs <b>Fine on officer in default:</b> with <b>imprisonment</b> for a term which may extend to 6 months <b>or with fine</b> Min- Rs. 25,000 Max- Rs. 1 Lakh, or <b>with both</b> .	If any company is in default in complying with any of the provisions of this Chapter, <b>the company</b> shall be liable to a <b>penalty</b> of Rs. 5 Lakhs and <b>every officer of the company</b> who is in default shall be liable to a <b>penalty</b> of Rs. 50,000.
88(5) Register of Members, etc.	If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), <b>Fine on Company:</b> Min- Rs. 50,000 Max- Rs. 3 Lakhs and where the <b>failure is a continuing one</b> , with a further fine of Rs. 1000 for every day, <b>Every officer of the company who is in default :</b> <b>Fine</b> of min- Rs. 50,000 Max-Rs. 3 Lakhs where the <b>failure is a continuing one</b> , with a further fine of Rs. 1000 for every day.	If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), <b>the company</b> shall be liable to a <b>penalty</b> of Rs. 3 Lakhs and every officer of the company who is in default shall be liable to a <b>penalty</b> of Rs. 50,000.

Section	Existing Provisions	Amended provisions
89(5) Declaration in Respect of Beneficial Interest in any Share	If any <b>person</b> fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with <b>fine</b> which may extend to Rs. 50,000 and where the <b>failure is a continuing one</b> , with a further fine which may extend to Rs. 1000 for every day after the first during which the failure continues.	If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a <b>penalty</b> of Rs. 50,000 and in case of continuing failure, with a <b>further penalty</b> of Rs. 200 for each day after the first during which such failure continues, subject to a maximum of Rs. 5 Lakhs.
89 Declaration in Respect of Beneficial Interest in any Share	If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, <b>the company and every officer of the company who is in default</b> shall be punishable with <b>fine</b> which shall not be less than Rs. 500 but which may extend to Rs. 1000 and where the <b>failure is a continuing one</b> , with a <b>further fine</b> which may extend to Rs. 1000 for every day after the first during which the failure continues.	If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, <b>the company and every officer of the company who is in default</b> shall be liable to a <b>penalty</b> of Rs. 1000 for each day during which such failure continues, subject to a maximum of <b>Rs. 5 Lakhs</b> in the case of a <b>company</b> and <b>Rs. 2 Lakhs</b> in case of an <b>officer who is in default</b> .
90(10) Register of significant beneficial owners in a company	If any <b>person</b> fails to make a declaration as required under sub-section (1), he shall be punishable with <b>imprisonment</b> for a term which may extend to 1 year <b>or</b> with <b>fine</b> which shall not be less than Rs. 1 Lakh but which may extend to Rs. 10 Lakhs <b>or</b> with both and <b>where the failure is a continuing one</b> , with a <b>further fine</b> which may extend to Rs. 1000 for every day after the first during which the failure continues.	If any <b>person</b> fails to make a declaration as required under sub-section (1), he shall be liable to a <b>penalty</b> of Rs. 50,000 and in case of continuing failure, with a <b>further penalty</b> of Rs. 1000 for each day after the first during which such failure continues, subject to a maximum of Rs. 2 Lakhs.
90(11) Register of significant beneficial owners in a company	If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, <b>the company and every officer of the company</b> who is in default shall be <b>punishable with fine</b> which shall not be less than Rs. 10 Lakhs but which may extend to Rs. 50 Lakhs and where the failure is a continuing one, with a <b>further fine</b> which may extend to Ra. 1000 for every day after the first during which the failure continues.	If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, the <b>company</b> shall be liable to a <b>penalty</b> of Rs. 1 Lakhs and in case of continuing failure, with a <b>further penalty</b> of Rs. 500 for each day, after the first during which such failure continues, subject to a maximum of Rs. 5 Lakhs <b>and every officer of the company who is in default</b> shall be liable to a <b>penalty</b> of Rs. 25,000 and in case of continuing failure, with a <b>further penalty</b> of Rs. 200 for each day, after the first during which such failure continues, subject to a maximum of Rs.1 Lakh.

Section	Existing provisions	Amended provisions
92(5) Annual Return	If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, <b>such company and its every officer who is in default</b> shall be liable to a <b>penalty</b> of Rs. 50,000 and in case of <b>continuing failure</b> , with <b>further penalty</b> of Rs. 100 for each day during which such failure continues, subject to a maximum of Rs. 5 Lakhs.	If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, <b>such company and its every officer who is in default</b> shall be liable to a <b>penalty</b> of Rs. 10,000 and in case of continuing failure, with <b>further penalty</b> of Rs. 100 for each day during which such failure continues, subject to a maximum of Rs. 2 Lakhs in case of a company and Rs. 50,000 in case of an officer who is in default.
92(6) Annual Return	If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with <b>fine</b> which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lakhs.	If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be liable to a <b>penalty</b> of Rs. 2 Lakhs.
105(5) Proxies	<p>If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, <b>every officer of the company who knowingly issues</b> the invitations as aforesaid or wilfully authorises or permits their issue</p> <p><b>shall be punishable with fine which may extend to Rs. 1 Lakh:</b></p> <p>Provided that an officer shall not be <b>punishable</b> under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.</p>	<p>If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a <b>penalty</b> of Rs. 50,000.</p> <p>Provided that an officer <b>shall not be liable</b> under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy</p>

Section	Existing provisions	Amended provisions
124(7) Unpaid Dividend Account.	<p>If a company fails to comply with any of the requirements of this section,</p> <p><b>Fine on Company:</b> Which shall not be less than Rs. 5 Lakhs but which may extend to Rs. 25 Lakhs and</p> <p><b>Every officer of the company who is in default shall be punishable : with fine</b> which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakhs.</p>	<p>If a company fails to comply with any of the requirements of this section,</p> <p><b>Penalty on Company:</b> Rs. 1 Lakh and in case of continuing failure, with a <b>further penalty</b> of Rs. 500 for each day after the first during which such failure continues, subject to a maximum of Rs. 10 Lakhs and</p> <p><b>Every officer of the company who is in default shall be liable to a penalty</b> of Rs. 25,000 and in case of continuing failure, with a <b>further penalty</b> of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 2 Lakhs.</p>
134(8) Financial Statements, Board's Report, etc	<p>If a company contravenes the provisions of this section,</p> <p><b>Fine on Company:</b> shall not be less than Rs. 50,000 but which may extend to Rs. 25 Lakhs and <b>every officer of the company who is in default</b> shall be <b>punishable with imprisonment</b> for a term which may extend to 3 years or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lakhs, or with both.</p>	<p>If a company is in default in complying with the provisions of this section, the <b>company</b> shall be liable to a <b>penalty</b> of Rs. 3 Lakhs and <b>every officer of the company who is in default</b> shall be liable to a <b>penalty</b> of Rs. 50,000.</p>
135(7) CSR	<p>If a company contravenes the provisions of sub-section (5) or sub-section (6),</p> <p><b>Fine on Company:</b> shall not be less than Rs. 50,000 but which may extend to Rs. 25 Lakhs and <b>every officer of the company who is in default</b> shall be punishable with <b>imprisonment</b> for a term which may extend to 3 years or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lakhs, or with both.</p> <p><i>Note : Section not notified yet.</i></p>	<p>If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the <b>company</b> shall be liable to a <b>penalty of twice the amount</b> required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs. 1 Crore, whichever is less, and <b>every officer of the company who is in default</b> shall be liable to a <b>penalty of 1/10th of the amount</b> required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs. 2 Lakhs, whichever is less.</p>

Section	Existing provisions	Amended provisions
143(15) Powers and Duties of Auditors and Auditing Standards	If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), <b>he shall be punishable with fine</b> which shall not be less than Rs. 1 Lakh but which may extend to Rs. 25 Lakhs.	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 <b>penalty of Rs. 5 Lakhs</b> ; and (b) in case of any other company, be liable to a <b>penalty of Rs. 1 Lakh</b>
172 Punishment	If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be <b>punishable with fine</b> which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lakhs.	If a company is in default in complying with any of the provisions of this Chapter and for which no specific penalty or punishment is provided therein, the company and every officer of the company who is in default shall be <b>liable to a penalty</b> of Rs. 50,000, and in case of <b>continuing failure, with a further penalty</b> of Rs. 500 for each day during which such failure continues, subject to a maximum of Rs. 3 Lakhs <b>in case of a company</b>
178(8) Nomination and Remuneration Committee and Stakeholders Relationship Committee	In case of any contravention of the provisions of section 177 and this section, the company shall be <b>punishable with fine</b> which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakhs and every officer of the company who is in default shall be punishable with <b>imprisonment for a term</b> which may extend to 1 year or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1 Lakh, or with both.	In case of any contravention of the provisions of section 177 and this section, the company shall be liable to a <b>penalty</b> of Rs. 5 Lakhs and every officer of the company who is in default shall be liable to a penalty of Rs. 1 Lakh.
184(4) Disclosure of Interest by Director	If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be <b>punishable with imprisonment</b> for a term which may extend to 1 year or <b>with fine</b> which may extend to Rs. 1 Lakh, or with both.	If a director of the company contravenes the provisions of sub-section (1) or subsection (2), <b>such director shall be liable to a penalty of Rs. 1 Lakh.</b>
187(4) Investments of Company to be Held in its Own Name	If a company contravenes the provisions of this section, the company shall be <b>punishable with fine</b> which shall not be less than Rs. 25,000 but which may extend to Rs. 25 Lakhs and every officer of the company who is in default shall be punishable with <b>imprisonment for a term</b> which may extend to 6 months or <b>with fine</b> which shall not be less than Rs. 25,000 but which may extend to Rs. 1 Lakh , or with both.	If a company is in default in complying with the provisions of this section, the company shall <b>be liable to a penalty</b> of Rs 5 Lakhs and every officer of the company who is in default shall <b>be liable to a penalty</b> of Rs. 50,000.

Section	Existing provisions	Amended provisions
188(5) <b>Related Party Transactions</b>	<p>Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall-</p> <p>(i) in case of listed company, be punishable <b>with imprisonment</b> for a term which may extend to 1 year or <b>with fine</b> which shall not be less than Rs. 25,000 but which may extend to Rs. 5 Lakhs, or with both; and</p> <p>(ii) In case of any other company, be punishable <b>with fine</b> which shall not be less than Rs. 25,000 but which may extend to Rs. 5 Lakhs.</p>	<p>Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall-</p> <p>(i) in case of listed company, be <b>liable to a penalty</b> Rs. 25 Lakhs; and</p> <p>(ii) In case of any other company, be <b>liable to a penalty</b> of Rs. 5 Lakhs.</p>
204(4) <b>Secretarial Audit for Bigger Companies</b>	<p>If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section,</p> <p>the company, every officer of the company or the company secretary in practice, who is in default, shall be <b>punishable with fine</b> which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakhs.</p>	<p>If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section,</p> <p>the company, every officer of the company or the company secretary in practice, who is in default, <b>shall be liable to a penalty of Rs. 2 Lakhs.</b></p>
232(8) <b>Merger and Amalgamation of Companies.</b>	<p>If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be <b>punishable with fine</b> which shall not be less than Rs. 1 Lakh but which may extend to Rs. 25 Lakhs and every officer of such transferor or transferee company who is in default, <b>shall be punishable with imprisonment</b> for a term which may extend to 1 year or <b>with fine</b> which shall not be less than Rs. 1 Lakh but which may extend to Rs. 3 Lakhs, or with both.</p>	<p>If a company fails to comply with sub-section (5), the company and every officer of the company who is in default shall be <b>liable to a penalty</b> of Rs. 20,000, and where the failure is a continuing one, with a <b>further penalty</b> of Rs. 1000 for each day after the first during which such failure continues, subject to a maximum of Rs. 3 Lakhs.</p>
247(3) <b>Valuation by Registered Valuers.</b>	<p>If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be <b>punishable with fine</b> which shall not be less than Rs. 25,000 but which may extend to Rs. 1 Lakh.</p> <p>Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakhs.</p>	<p>If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer <b>shall be liable to a penalty of Rs. 50,000.</b></p> <p>Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to 1 year and with <b>fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakhs.</b> [Proviso has not been amended]</p>



# OMISSION OF IMPRISONMENT PROVISIONS

TO BE RESTRICTED TO FINE ONLY



# Omission of imprisonment provisions (1/5)

Section	Existing Provisions	Amended provisions
8(11) Formation of Companies with Charitable Objects, etc.	<p>If a company makes any default in complying with any of the requirements laid down in this section, the <b>Directors and every officer of the company</b> who is in default:</p> <p>Shall be punishable with <del>imprisonment for a term</del> which may <del>extend to 3 years</del> or with fine which shall not be less than Rs. 25000 which may extend to Rs. 25 lakhs, <del>or with both.</del></p> <p><b>Provided</b> that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.</p>	<p>If a company makes any default in complying with any of the requirements laid down in this section, the <b>Directors and every officer of the company</b> who is in default:</p> <p>Shall be punishable <del>with imprisonment for a term which may extend to 3 years</del> or with fine which shall not be less than Rs. 25000 which may extend to Rs. 25 lakhs, <del>or with both.</del></p> <p>Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.</p>
26(9) Matters to be Stated in Prospectus	<p>If a prospectus is issued in contravention of the provisions of this section, <b>every person who is knowingly a party to the issue of such prospectus:</b></p> <p>shall be punishable with <del>imprisonment for a term which may extend to three years</del> or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 3 Lakhs <del>or with both.</del></p>	<p>If a prospectus is issued in contravention of the provisions of this section, <b>every person who is knowingly a party to the issue of such prospectus:</b></p> <p>shall be punishable <del>with imprisonment for a term which may extend to three years</del> or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 3 Lakhs <del>or with both.</del></p>
40(5) Securities to be Dealt with in Stock Exchanges	<p>If a default is made in complying with the provisions of this section, <b>every officer of the company who is in default shall be punishable :</b></p> <p><del>With imprisonment for a term which may extend to one year</del> or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 3 Lakhs, <del>or with both.</del></p>	<p>If a default is made in complying with the provisions of this section, <b>every officer of the company who is in default shall be punishable :</b></p> <p><del>With imprisonment for a term which may extend to one year</del> or With fine which shall not be less than Rs. 50,000 but which may extend to Rs. 3 Lakhs, <del>or with both.</del></p>

# Omission of imprisonment provisions (2/5)

Section	Existing Provisions	Amended provisions
68(11) Power of Company to Purchase its Own Securities	<p>If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), <b>every officer of the company who is in default shall be punishable :</b></p> <p>With <b>imprisonment for a term which may extend to 3 years</b> or with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 3 Lakhs, <b>or with both.</b></p>	<p>If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), every officer of the company who is in default shall be punishable :</p> <p><del>With imprisonment for a term which may extend to 3 years</del> or with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 3 Lakhs, <del>or with both.</del></p>
128(6) Books of Account, etc., to be kept by Company	<p>If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such MD, WTD in charge of finance, CFO or such other person of the company shall be punishable with <b>imprisonment for a term which may extend to 1 year</b> or with <b>fine</b> which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lakhs <b>or with both.</b></p>	<p>If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such MD, WTD in charge of finance, CFO or such other person of the company shall be punishable <del>with imprisonment for a term which may extend to 1 year</del> or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lakhs <del>or with both.</del></p>
147(1) Punishment for contravention	<p>If any of the provisions of <u>sections 139 to 146</u> (both inclusive) is contravened, <b>every officer of the company who is in default shall be punishable :</b></p> <p>with <b>imprisonment for a term which may extend to 1 year</b> or with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 1 Lakh, <b>or with both.</b></p>	<p>If any of the provisions of sections 139 to 146 (both inclusive) is contravened, <b>every officer of the company who is in default shall be punishable :</b></p> <p><del>with imprisonment for a term which may extend to 1 year</del> or with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 1 Lakh, <del>or with both.</del></p>

# Omission of imprisonment provisions (3/5)

Section	Existing Provisions	Amended provisions
167(2) Vacation of Office of Director	If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with <b>imprisonment for a term which may extend to 1 year</b> or with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakhs, or <b>with both</b>	If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with <del>imprisonment for a term which may extend to 1 year</del> or with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakhs, <del>or with both</del>
242(8) Powers of Tribunal	If a company contravenes the provisions of sub-section (5), every officer of the company who is in default shall be punishable <b>with imprisonment for a term which may extend to 6 months</b> or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1 Lakh, <b>or with both.</b>	If a company contravenes the provisions of sub-section (5), every officer of the company who is in default shall be punishable <del>with imprisonment for a term which may extend to 6 months</del> or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1 Lakh, <del>or with both.</del>
243(2) Consequence of Termination or Modification of Certain Agreements	Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A), and every other director of the company who is knowingly a party to such contravention, shall be punishable with <b>imprisonment for a term which may extend to 6 months</b> or with fine which may extend to Rs. 5 Lakhs, or <b>with both.</b>	Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A), and every other director of the company who is knowingly a party to such contravention, shall be punishable <del>with imprisonment for a term which may extend to 6 months</del> or with fine which may extend to Rs. 5 Lakhs, <del>or with both.</del>
347(4) Disposal of Books and Papers of Company.	If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with <b>imprisonment for a term which may extend to 6 months</b> or with fine which may extend to Rs. 50,000, or <b>with both.</b>	If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable <del>with imprisonment for a term which may extend to 6 months</del> or with fine which may extend to Rs. 50,000, <del>or with both.</del>

# Omission of imprisonment provisions (4/5)

Section	Existing provisions	Amended provisions
86(1) Punishment for Contravention.	If any company contravenes any provision of this Chapter, <b>Fine on officer in default:</b> with <b>imprisonment</b> for a term which may extend to 6 months or <b>with fine</b> Min- Rs. 25,000 Max- Rs. 1 Lakh, or <b>with both</b> .	If any company is in default in complying with any of the provisions of this Chapter, <b>every officer of the company</b> who is in default shall be liable <del>with imprisonment for a term which may extend to 6 months</del> to a <b>penalty</b> of Rs. 50,000.
134(8) Financial Statements, Board's Report, etc	If a company contravenes the provisions of this section, <b>every officer of the company who is in default</b> shall be <b>punishable with imprisonment</b> for a term which may extend to 3 years or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lakhs, or with both.	If a company is in default in complying with the provisions of this section, <b>every officer of the company who is in default</b> shall be <del>punishable with imprisonment for a term which may extend to 3 years</del> shall be liable to a <b>penalty</b> of Rs. 50,000.
135(7) CSR	If a company contravenes the provisions of sub-section (5) or sub-section (6), <b>every officer of the company who is in default</b> shall be punishable with <b>imprisonment</b> for a term which may extend to 3 years or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 Lakhs, or with both. <i>Note : Section not notified yet.</i>	If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), <b>every officer of the company who is in default</b> shall be punishable with <del>imprisonment for a term which may extend to 3 years</del> shall be liable to a <b>penalty of 1/10th of the amount</b> required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs. 2 Lakhs, whichever is less.
178(8) Nomination and Remuneration Committee and Stakeholders Relationship Committee	In case of any contravention of the provisions of section 177 and this section, every officer of the company who is in default shall be punishable with <b>imprisonment for a term</b> which may extend to 1 year or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1 Lakh, or with both.	In case of any contravention of the provisions of section 177 and this section, every officer of the company who is in default shall be liable to a penalty of Rs. 1 Lakh and <del>shall be punishable with imprisonment for a term</del> which may extend to 1 year

# Omission of imprisonment provisions (5/5)

Section	Existing provisions	Amended provisions
187(4) Investments of Company to be Held in its Own Name	If a company contravenes the provisions of this section, every officer of the company who is in default shall be punishable with <b>imprisonment for a term</b> which may extend to 6 months or <b>with fine</b> which shall not be less than Rs. 25,000 but which may extend to Rs. 1 Lakh , or with both.	If a company is in default in complying with the provisions of this section, every officer of the company who is in default shall <b>be liable to a penalty</b> of Rs. 50,000 and <del>punishable with imprisonment for a term</del> which may extend to 6 months
188(5) Related Party Transactions	Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall- in case of listed company, be punishable <b>with imprisonment</b> for a term which may extend to 1 year	Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall- in case of listed company, be <b>liable to a penalty</b> Rs. 25 Lakhs; and <del>be punishable with imprisonment</del> for a term which may extend to 1 year
232(8) Merger and Amalgamation of Companies.	If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, every officer of such transferor or transferee company who is in default, <b>shall be punishable with imprisonment</b> for a term which may extend to 1 year or <b>with fine</b> which shall not be less than Rs. 1 Lakh but which may extend to Rs. 3 Lakhs, or with both.	If a company fails to comply with sub-section (5) every officer of the company who is in default shall be <del>shall be punishable with imprisonment</del> for a term which may extend to 1 year <b>liable to a penalty</b> of Rs. 20,000, and where the failure is a continuing one, with a <b>further penalty</b> of Rs. 1000 for each day after the first during which such failure continues, subject to a maximum of Rs. 3 Lakhs.



# AMENDMENT IN SOME PENAL PROVISIONS

AMENDMENT IN QUANTUM OF PENALTY



# Amendment in penal provisions

Section	Existing provisions	Amended provisions
64(2) Notice to be Given to Registrar for Alteration of Share Capital	Where any company fails to comply with the provisions of sub-section (1), <b>Penalty on Company and every officer who is in default</b> shall be liable to a <b>penalty of Rs. 1000 for each day</b> during which such default continues, <b>or Rs. 5 Lakhs whichever is less.</b>	Where any company fails to comply with the provisions of sub-section (1), <b>Penalty on Company and every officer who is in default</b> shall be liable to a <b>penalty of Rs. 500 for each day</b> during which such default continues, subject to a <b>maximum of Rs. 5 Lakhs</b> in case of a <b>company</b> and <b>Rs. 1 Lakh in case of an officer who is in default.</b>
117(2) Resolutions and Agreements to be Filed	If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, <b>Penalty on Company: Rs. 1 Lakh</b> and in case of continuing failure, with <b>further penalty of Rs. 500 for each day</b> after the first during which such failure continues, subject to a <b>maximum of Rs. 25 Lakhs.</b> <b>Every officer of the company who is in default including liquidator of the company</b> , if any, shall be liable to a <b>penalty of Rs. 50,000</b> and in case of <b>continuing failure</b> , with <b>further penalty of Rs. 500 for each day</b> after the first during which such failure continues, subject to a <b>maximum of Rs. 5 Lakhs.</b>	If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, <b>Penalty on Company: Rs. 10,000</b> and in case of continuing failure, with <b>further penalty of Rs. 100 for each day</b> after the first during which such failure continues, subject to a <b>maximum of Rs. 2 Lakhs.</b> <b>Every officer of the company who is in default including liquidator of the company</b> , if any, shall be liable to a <b>penalty of Rs. 10,000</b> and in case of <b>continuing failure</b> , with <b>further penalty of Rs. 100</b> for each day after the first during which such failure continues, subject to a <b>maximum of Rs. 50,000.</b>

Section	Existing provisions	Amended provisions
<p>137(3) Copy of Financial Statement to be Filed with Registrar</p>	<p>If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein, the <b>company shall be liable to a penalty of Rs. 1000 for every day</b> during which the failure continues but which <b>shall not be more than Rs. 10 Lakhs</b>, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, <b>shall be liable to a penalty of Rs. 1 Lakh and in case of continuing failure, with further penalty of Rs. 100 for each day</b> after the first during which such failure continues, subject to a <b>maximum of Rs. 5 Lakhs</b>.</p>	<p>If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein, the <b>company shall be liable to a penalty of Rs. 10,000 and in case of continuing failure, with a further penalty of Rs. 100 for each day</b> during which such failure continues, subject to a <b>maximum of Rs. 2 Lakhs</b>, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, <b>shall be liable to a penalty of Rs. 10,000</b> and in case of continuing failure, with <b>further penalty of Rs. 100 for each day</b> after the first during which such failure continues, subject to a <b>maximum of Rs. 50,000</b>.</p>
<p>140(3) Removal, Resignation of Auditor and Giving of Special Notice</p>	<p>If the auditor does not comply with the provisions of sub-section (2), he or it shall be <b>liable to a penalty of Rs. 50,000 or an amount equal to the remuneration of the auditor</b>, whichever is less, <b>and in case of continuing failure, with further penalty of Rs. 500 for each day</b> after the first during which such failure continues, subject to a <b>maximum of Rs. 5 Lakhs</b>.</p>	<p>If the auditor does not comply with the provisions of sub-section (2), he or it <b>shall be liable to a penalty of Rs. 50,000 or an amount equal to the remuneration of the auditor</b>, whichever is less, and in case of continuing failure, with further penalty of Rs. 500 for each day after the first during which such failure continues, <b>subject to a maximum of Rs. 2 Lakhs</b>.</p>
<p>165(6) Number of Directorships</p>	<p>If a person accepts an appointment as a director in contravention of sub-section (1), <b>he shall be liable to a penalty of Rs. 5000 for each day</b> after the first during which such contravention continues.</p>	<p>If a person accepts an appointment as a director in violation of this section, <b>he shall be liable to a penalty of Rs. 2000 for each day</b> after the first during which such violation continues, subject to a <b>maximum of Rs. 2 Lakhs</b>."</p>



# OMISSION OF PENAL PROVISIONS

RELAXATION FROM PENAL PROVISIONS



# Omission of penal provisions

Section	Existing provisions	Status
48(5) Variation of Shareholders' Rights.	Where any default is made in complying with the provisions of this section,  <b>Fine on Company:</b> Which shall not be less than Rs. 25,000 but which may extend to Rs. 5 Lakhs and  <b>Every officer of the company who is in default shall be punishable</b> :with imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5 Lakhs, or with both.	Omitted
59(5)	If any default is made in complying with the order of the Tribunal under this section,  <b>Fine on Company:</b> Which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakhs and  <b>Every officer of the company who is in default shall be punishable</b> : With imprisonment for a term which may extend to 1 year <b>or</b> with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 3 Lakhs, or with both.	Omitted
66(11) Reduction of Share Capital.	If a company fails to comply with the provisions of sub-section (4), <b>Fine on Company:</b> Which shall not be less than Rs. 5 Lakhs but which may extend to Rs. 25 Lakhs	Omitted
71(11) Debentures	If any default is made in complying with the order of the Tribunal under this section,  <b>Every officer of the company who is in default shall be punishable</b> : With imprisonment for a term which may extend to 3 years <b>or</b> with fine which shall not be less than Rs. 2 Lakhs but which may extend to Rs. 5 Lakhs, or with both.	Omitted
342(6) Prosecution of Delinquent Officers and Members of Company	If a person fails or neglects to give assistance required by sub-section (5), he shall be liable to pay fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1 Lakh.	Omitted
348(7) Information as to Pending Liquidations.	If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (1) audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 1 Lakh, or with both.	Omitted

## B. AMENDMENTS RELATING TO EASE OF LIVING

**Amendments in CSR provisions**

**Payment of minimum remuneration to NEDs in case of inadequacy of profits**

**Preparation and submission of financial results by unlisted companies**

**Reduction of time limit for rights issue**

**Reduction of additional fees in case of repeated defaults u/s 403**

**Exclusion of certain companies from compliance of provision of section 89 etc.**

**Relaxations for NBFCs, HFCs, Start up and small companies**

**Rebirth of producer companies**



# AMENDMENTS IN CSR PROVISIONS

ANALYSIS AND IMPACT



# Introduction of penal provisions- shift from 'COPF to COPP'

- Companies (Amendment) Act, 2019
  - Introduced new sub-section (7) to section 135
  - Section provided for penal provisions
  - Shift from Comply or Explain i.e. 'COREX' to Comply or Pay Fine i.e. COPF'
  - Not yet notified
- Penal provisions include:
  - Fine on company
    - Min- Rs. 50,000
    - Max- Rs. 25 lakhs
  - Officers in default
    - Min- Rs. 50,000
    - Max- Rs. 5 lakhs
    - Imprisonment- Max 3 years
- Companies (Amendment) Act, 2020
  - Substituted earlier introduced sub-section (7)
  - Shift from 'COPF' to Comply or Pay Penalty i.e. 'COPP'
  - Can be notified only after notification of section under Companies (Amendment) Act, 2019
- Penal provisions include:
  - Penalty on company
    - Upto twice the amount required to be transferred to fund specified in Schedule VII or Unspent CSR a/c
    - Rs. 2 lakhs, whichever is lower
  - Penalty on officers in default
    - 1/10 of amount required to be transferred to fund specified in Schedule VII or Unspent CSR a/c
    - Rs. 2 lakhs, whichever is lower

## Comparatives- CA 13, CAA, 2019 & CAA, 2020

Existing provisions under CA 13	Amendments introduced in Companies (Amendment) Act, 2019	Amendments introduced in Companies (Amendment) Act, 2020
Comply or Explain principle (COREX)	Comply or Pay Fine principle (COPF)	Comply or Pay Penalty principle (COPP)
<p>No penalty on Company</p> <p>Disclosure of not spending to be explained in Annual Report.</p>	Company- Fine of min Rs, 50,000 & max Rs. 25 lakhs	<p>Penalty upto twice the amount required to be transferred to fund specified in Schedule VII or Unspent CSR account</p> <p style="text-align: center;">Or</p> <p>Rs. 1 Crore (whichever is lower)</p>
No penalty on Officers in default	<p>Officers in default- Imprisonment of max 3 yrs</p> <p>Fine of min Rs. 50,000 &amp; max Rs. 5 lakhs or both</p>	<p>Officers in default- Penalty of 1/10<sup>th</sup> of amount required to be transferred to fund specified in Schedule VII or Unspent CSR account</p> <p style="text-align: center;">Or</p> <p>Rs. 2 lakhs (whichever is lower)</p>

## Other amendments under CSR provisions

- Excess expenditure made in one year (>2%)
  - May be set off with spending requirements of succeeding years
  - Procedure to be prescribed
  - No limit prescribed for succeeding years
  - Similar provision also proposed in draft CSR (Amendment) Rules, 2020
- No constitution of CSR committee
  - Where CSR expenditure does not exceed Rs. 50 lakhs
  - Functions of such committee shall be discharged by BoD
  - New insertion in section 135



# REMUNERATION TO NED

INCLUSION OF PROVISION FOR PAYMENT IN TIMES OF INADEQUACY OF PROFITS



# Minimum remuneration to IDs and NEDs

- The existing provisions of CA, 2013 permits payment of only sitting fees and profit related commission to the IDs/NEDs.
  - Limit of 1%/3% of net profits is provided for payment made to NEDs.
  - No provision for payment of remuneration to NEDs in case of inadequacy of profits
- CAA, 2020 recommends
  - Minimum remuneration to be paid to NEDs and IDs during inadequacy of profits
  - Minimum remuneration shall exclude sitting fees paid for attending meeting
  - Amendment introduced both in section 149(9) and 197(3) of CA, 2013
    - Sec. 197(3) refers to the requirements under schedule V



# FINANCIAL RESULTS

PREPARATION AND SUBMISSION REQUIREMENTS FOR UNLISTED COMPANIES



# Periodical Financial Results

- Introduction of new section 129A of CA, 2013 for preparation of periodical financial results by unlisted company
- The following to be prescribed:
  - Class of companies and periodicity of results
  - Manner of audit of results
  - Filing fee
- Other compliances:

Prepare periodical financial results

Obtain approval of BoD

Limited review or audit of periodical financial results

File copy with ROC within 30 days

Mandating preparation of financial results for unlisted companies and conducting of limited review may become a compliance burden. Hence, the class of companies to be obligated for such conduct, must be judicially decided upon.

# Comparison with Listing Regulations

Particulars	Under CA, 2013	Under LODR
Reference	New section 129A has been introduced for preparation and filing of financial results	Regulation 33 and 52 requires listed entity to prepare quarterly/ <b>half yearly</b> financial results
Periodicity	To be prescribed	To be prepared quarterly/ <b>half yearly</b> on standalone and consolidated basis, based on type of securities listed
Approval	Board of Directors	Board of Directors
Certification	Not specified	CEO & CFO has to certify authenticity of results
Filing	Has to be submitted to MCA periodically	Has to be submitted to stock exchange within 45 days of end of each quarter/ <b>half year</b> other than last quarter where it can be submitted within 60 days of the end of quarter/ <b>half year</b>
Limited Review	Financial results should be either audited or limited review by auditors	Yes. Limited review or audit report have to submitted to stock exchange



# DEFINITION OF LISTED COMPANIES

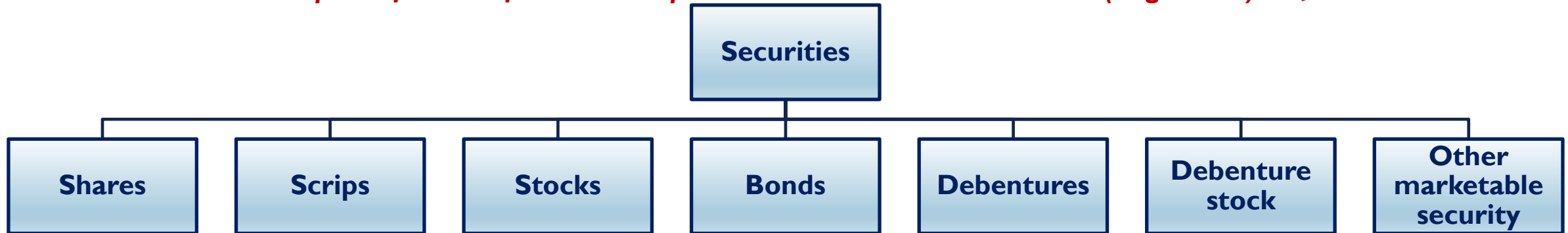
CLASS OF COMPANIES TO BE PRESCRIBED



# Exclusion from definition of listed company- u/s 2(52)

Section 2(52) of CA, 2013: Listed Company- refers to companies which has any of its **SECURITIES** listed on stock exchange

*As per definition of 'securities' provided under Securities Contract (Regulation) Act, 1956*



- Included both equity and debt listed companies
- CAA, 2020 proposes to exclude class of companies to be prescribed from the definition
  - Intent of such exclusion is to relieve debt listed private companies from corporate governance norms under CA, 2013.
    - As recommended by CLC
  - Promote ease of doing business for companies issuing listed debt securities.



# RELAXATION FOR NBFC & HFC

RELAXATION FOR FILING OF RESOLUTIONS



## Relaxation to NBFCs & HFCs

- Resolutions and agreements required to be filed with ROC as per Section 117
  - Prescribed list of items which are required to be filed with ROC in e-Form MGT-14
  - Also includes list of transactions mentioned in section 179 of CA, 2013 read with its Rules
  - Earlier section exempted banking companies
    - From filing resolution under e-Form MGT-14
    - For transaction such as grant of loans, guarantee, security as mentioned in section 179(3)(f)
      - Condition- should be in ordinary course of business
  - The said exemption has been extended to registered NBFCs and HFCs



# RELAXATION TO START UP & SMALL COMPANIES

LESSER PENALTY



# Lesser penalty for start ups and small companies

- Introduction of new section 446B for lesser penalties for start up and producer companies.
  - Penalty of  $\frac{1}{2}$  of penalty specified in provisions.
  - Maximum penalty of Rs. 2 lakhs for company.
  - Maximum penalty of Rs. 1 lakh for officer in default.



# PRODUCER COMPANIES

REBIRTH OF CONCEPT



# Cooperatives to be corporatized- rebirth of producer companies

- Introduction of new chapter XXIA for producer companies
  - Concept of producer companies was introduced in 2002 in India by inclusion in Part IXA of erstwhile provisions of Companies Act, 1956.
  - No specific provision in CA, 2013
    - Reference drawn by section 465 of CA, 2013 to Part IXA of Companies Act, 1956 which is still in force for regulation of such companies.
  - Act suggest inclusion of Part IXA of Companies Act, 1956 as Chapter XXIA of CA, 2013.
  - Introduction of new section 446B for lesser penalties for start up and producer companies.
    - Penalty of 1/2 of penalty specified in provisions.
    - Maximum penalty of Rs. 2 lakhs for company.
    - Maximum penalty of Rs. 1 lakh for officer in default.



## OTHER AMENDMENTS



# Other relevant amendments (1/2)

## Exclusion of certain companies from section 89 & Chapter XXII of CA, 2013

- Enabling provision for exemption clause in Section 89 to such class of companies as may be prescribed by Govt.

## Rights Issue

- Existing time span of minimum 15 days and not exceeding 30 days for acceptance of rights issue offer may be reduced.
  - This shall lead to rights issue being one of the fast track mode for issuance of funds.

## Rectification of Name

- If after registration of a company
  - Name resembles a registered trademark
  - Application made by registered proprietor of trade mark
  - Within 3 yrs of incorporation or registration of name
  - CG may direct a company to change its name or new name to be adopted by passing ordinary resolution
    - Earlier name to be changed within 6 months of issue of direction
    - Amended to 3 months of issue of direction

# Other relevant amendments (2/2)

## Public issue of securities

- Issue of securities by public companies
  - Can issue such class of securities as may be prescribed
  - Can be permitted to list on permitted stock exchanges and foreign jurisdiction
  - New sub-section to be inserted in section 23
- Exemption provisions
  - Central Government may exempt class of public companies from compliance of:
    - Chapter III & IV of CA, 2013
      - Chapter III- Prospectus and Allotment of Securities
      - Chapter IV- Share Capital and Debentures
    - Section 89 & 90
    - Section 127

## Additional fee for repeated defaults

- Third proviso of section 403(1)
- Existing provisions provide that in case of repeated defaults twice the amount of additional fee shall be prescribed
- CAA 2020 prescribes higher additional fee
  - Shall not be as high as twice the amount of additional fee
  - Higher additional fee shall be prescribed

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