

Corporate Laws (Amendment) Bill, 2026

- Companies Act, 2013

Vinod Kothari and Company

Kolkata:

Aanjneyam, B42, Metropolitan
Cooperative Housing Society,
Kolkata 700105
Phone: 033 4501 7864/ 2323 3742
Email: kolkata@vinodkothari.com

New Delhi:

Nukleus, 501 & 501A,
Salcon Rasvilas,
District Centre, Saket,
New Delhi - 110017
Phone: 011 6551 5340
Email: delhi@vinodkothari.com

Mumbai:

403-406, Shreyas Chambers
175, D N Road, Fort
Mumbai
Phone: 022 2261 4021/ 3044 7498
Email: mumbai@vinodkothari.com

Bengaluru:

Rent A Desk
4, Union Street, Infantry Rd,
Shivaji Nagar
Bengaluru- 560001
Phone: 033 2281 3742
Email: corplaw@vinodkothari.com

Reach us on social media:



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- Vinod Kothari and Company, company secretaries, is a firm with more than 35 years of vintage
 - Based out of Kolkata, Mumbai, New Delhi and Bengaluru
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Highlights of Proposed Amendments - Companies Act, 2013 (1/2)

■ **Administration of justice:**

- Decriminalisation: major effort towards moving to a penalty regime
- Penalty scales become non discretionary
- Appellate process for adjudication laid
- Stringent process for recovery of penalties
- Settlement proceedings

■ **Small is beautiful and deserves soft touch**

- Several relaxation proposed for small companies
- A new class of ultra-small companies to emerge, exempt even from audit requirements

■ **Ease of exit**

- Mandatory and voluntary strike off process to undergo some reform
- Summary liquidation may, after good 12 years, become practical, though asset cap remains too small
- Dormancy to be mandatory

■ **Ease of scaling down**

- Buyback to be permitted twice a year
- For a debt-free company, a higher percentage to be specified

■ **Executive compensation**

- Share linked compensation plans to be brought via rules; seems rule-making will cover SARs also

■ **Keep your financial statements up to date:**

- Consistent filing lapse for 2 years to make directors disqualified, not just in defaulter company but in all cos

■ **NFRA**

- Several changes proposed on NFRA constitution, powers, revenues, etc

Highlights of Proposed Amendments - Companies Act, 2013 (2/2)

■ Valuation profession

- IBBI gets control of the profession
- Strict rules for independence and conflicts on valuer, backed by punitive consequences

■ Appointment of directors

- Time limit of 3 months for board appointed additional director, casual vacancy filler, and alternate director

■ Independent directors

- Minor clarificatory changes in the conditions of independence
- Cooling off period to extend to holding, associate and subsidiary as well

■ Directors report to contain explanation for adverse observations of auditors, and reason for non-acceptance of AC recommendations

■ Resignation of whole time KMP, not being a director, gets a right to resign with immediate effect

■ Auditors

- Absolute bar on non-audit services for prescribed class of cos.
- In other cases, bar to extend to the group of companies

■ Multidisciplinary firms - both for cost audit and secretarial audit being enabled

■ Trust not a recognised member:

- FM's introduction of the Bill says, trustee will be entered in register of members, with trustee as beneficiary

■ CSR relaxations

- The profit threshold for triggering CSR doubled to Rs 10 crores
- CSR Committee not applicable if the required spend is less than Rs 1 crore

Small Companies [Sec. 2(85)] - (1/2)

- Statutory Threshold increased for being qualified as small company
 - **PUSC: 10 cr → 20 cr**
 - **Turnover: 100 cr → 200 cr**
- Actual threshold comes from Rule 2(1)(t) of Companies (Specification of Definitions Details) Rules, 2014 [presently Rs 10 crores PUSC, turnover Rs 100 crores]
- **Present Exemptions:**

Provision	Particulars	Exemption
Section 233	Fast Track Merger	<ul style="list-style-type: none"> ● Two or more small companies may enter into a scheme of merger or amalgamation without complying with Sections 230 and 232
Section 173 (5)	Meetings of Board	<ul style="list-style-type: none"> ● At least one meeting of the Board in each half of calendar year (min. 90 days gap) Proposed: 1 meeting/ calendar year
CARO, 2020	Applicability of CARO	<ul style="list-style-type: none"> ● Exempted from complying with CARO, 2020 for Statutory audits
Rule 9B of PAS Rules	Issue of Securities in Demat Form	<ul style="list-style-type: none"> ● Exempted from the requirement of mandatory dematerialisation
Section 446B	Lesser Penalties for Small Cos	<ul style="list-style-type: none"> ● Non-compliance with any position shall attract one-half of prescribed penalty ● Maximum of Rs. 2 lacs for company and Rs 1 lac for officer in default

Small Companies [Sec. 2(85)] - present exemptions (2/2)

Provision	Particulars	Exemption
Proviso to Section 2(40)	Cash Flow Statement	<ul style="list-style-type: none"> Cash Flow Statement is not required to be included in the financial statements
Section 92 & Rule 11 of MGT Rules	Annual Return and Signing	<ul style="list-style-type: none"> Annual Return to be filed in Form No. MGT-7A (abridged format) Can be signed by CS, or Director if no CS (PCS certification not required)
Sec 134 (3A) & Rule 8A of Accounts Rules	Board's Report and its Contents	<ul style="list-style-type: none"> Abridged format of Board's Report permitted Can be signed by CS, or Director if no CS (PCS certification not required)
Rule 5 of Audit Rules	Rotation of Auditors	<ul style="list-style-type: none"> Provisions of Section 139 (2) shall not be applicable
Rule 8 & 12 of (Registration Offices Rules)	Authentication of Documents & Fees	<ul style="list-style-type: none"> Certain e-forms (INC, PAS, DIR, CHG, etc.) do not require pre-certification by PCS Reduces compliance burden and professional involvement Lesser or nil fees for filings u/s 403, application u/s 459 and annual fees by Dormant companies

Proposed Exemptions (likely small companies)

Particulars	Provisions	Exemption
CSR applicability	Sec 135(10)	<ul style="list-style-type: none"> Provisions of CSR shall not be applicable to prescribed class of companies.
Appointment of auditor	Sec 139(12)	<ul style="list-style-type: none"> Prescribed class of companies shall not be required to appoint auditor. This, it seems, will be applicable for ultra small cos - Rajiv Gauba Committee recommended turnover of Rs 1 crore
Buyback of shares	Sec 68	<ul style="list-style-type: none"> Buy back permitted more than once a year with minimum 6 month gap: quite likely for debt free companies Limit of Buyback may exceed 25% of paid-up capital and free reserves.
Charge creation	Proviso to Sec 77(1)	<ul style="list-style-type: none"> Extension of period of registration of charge from 60 days to 120 days
Max. additional fees	Proviso to Sec 403 & 446B	<ul style="list-style-type: none"> CG may prescribe minimum additional fee of less than ₹100 per day maximum upto 2 lakhs [For delay in filing FS/AR] CG to prescribe penalty one half or such percent not exceeding one half of the penalty.
Service of Documents	Sec 20(2)	<ul style="list-style-type: none"> Companies may provide prescribed documents to their members only through electronic mode

IFSC Companies

- **IFSC companies (Section 43A)**
 - Share capital to be accounted for and disclosed only in permitted foreign currency and any existing capital also to be converted to such foreign currency.
 - Subsequent capital not allowed without converting the same into permitted foreign currency.
 - To prepare its books and records in the permitted foreign currency, however, may be allowed to prepare in INR, if permitted by IFSCA. [Section 34(1)] Specified
 - May use permitted foreign currency for filings under this Act, however, payment of fees/fines/penalties, to be made in INR.

Private Placement

- **Private placement (Sec 42)**
 - Heading rationalised to “securities”
 - Penalty for contravention made equivalent to amount raised or Rs. 2 crore, whichever is lower
 - Currently extendable to 2cr or amt raised, whichever lower.
 - Is the trigger the recent private placement excesses? [Read our article here.](#)

ESOPs and share-linked employment benefits

- **Share-linked benefits (SARs, RSUs etc.) recognised**
 - Recognition of share linked scheme
 - Inclusion of SARs, RSUs and other schemes linked to the value of share capital of company
- *“Scheme linked to value of share capital” has been added at multiple places:*
 - *Sections 42, 62, 68*
 - *If it is a scheme linked with value, and not share capital itself, it may not amount to a security at all*
- Key provisions
 - **Issue to employees** on preferential basis (in addition to ESOPS)
 - Such holders excluded from the **limit on private placement basis**
 - Rationale - executive compensation with approval of shareholders
 - Enabling buyback of such securities
- CLC Report recommended enabling provisions for recognising RSUs and SARs
- These provisions were explained as intended to provide flexibility to executive compensation:
 - currently, it is an SAR, it is not a “security” at all
 - The law prohibit any such structure; even SEBI regulations are silent on SARs
- Key question:
 - SAR, for example, is not a “security” at all - it is not even an interest in a security. It is merely a benefit linked with the value of the security
- So, how does sec 62 or sec 42 apply in case of SARs?
- Quite likely, we will see rule-making which will cover any form of employment benefit linked with share value

Buyback provisions

- **Buyback of shares (Sec 68)**
 - CG to prescribe or certain classes of companies
 - different % for buy-back - both the percentage of the equity shares that may be bought back, as also the percentage of PUSC + FR that can be spent for buyback
 - Minimum time gap for two buy back offers to be reduced from 1 year to 6 months; subject to company being debt free
 - enabling buy-back through tender-offer
 - Requirement of affidavit for SH-9 (declaration solvency) proposed to be omitted; in other words, declaration need not be backed by affidavit
 - CLC Report recommended replacement of affidavit with self declaration as punishment for false declaration is same as that of providing false evidence on affidavit.
 - Decriminalization of contravention of buyback provisions
- **With the Income-tax law once again reverting to capital gain tax on buybacks, are we back to buybacks?**
 - Finance Bill 2026 provides for tax on buyback as per applicable capital gains.
 - Additional tax on “promoters”, such that the applicable rate becomes 22% for companies and 30% for others
 - The SC has also recently recognised disproportional reduction of capital [In the matter of Bharti Telecom]:
 - Hence, companies may choose between buyback and reduction

Dividend related provisions [Sec. 124 & 125]

- Unpaid/unclaimed dividend for 7 years → transfer to IEPF (in addition to shares)
 - CLC Report recommended such clarification to be inserted
- If shares are transferred to IEPF, all future dividends on such shares also go to IEPF.
- Unclaimed buyback proceeds for 7 years must be transferred to IEPF.
 - CLC recommended transfer of unclaimed amounts payable to shareholders (arising from buyback/cancellation of shares or securities under Section 68) to IEPF after remaining unclaimed for 7 years or more.
- CG to prescribe procedure and requisite documents for claiming entitled amount from IEPF
- IEPF Authority granted powers of delegation.
 - In line with the practice followed by other Indian regulators

Corporate Social Responsibility [Sec. 135]

Particulars	Existing	Proposed
Net profit threshold for applicability of Sec. 135	Rs. 5 cr	Rs. 10 cr
Timeline for transferring unspent CSR amount (ongoing projects)	30 days from FY end	90 days from FY end
Exemption from constitution of CSR Committee (based on CSR liability)	Rs. 50 lacs	Rs. 1 cr

- CG to prescribe rules for:
 - Classes of companies to be exempted from Sec. 135
 - Existing Sec. 8 co?
 - amount of net profit for applicability of CSR: it appears that the CG may even prescribe higher than Rs 10 crores
 - Amount of CSR liability for mandatory constitution of CSR committee: The CG may provide for a higher amount too

Easing of Scheme of Arrangements [Sec. 230-233A]

Single NCLT Jurisdiction

- Schemes of arrangement involving companies across multiple states will now be handled by one NCLT
 - Also applies in case of FTMs where RD raises concern (public interest) and refers matters to NCLT
- Jurisdiction lies with the NCLT of the transferee/resulting company
 - Eliminates dependency on orders from multiple benches

Demerger process relaxed

- No requirement of OL's report

Fast Track mergers

- Approval threshold of Fast Track merger relaxed-
 - Members: Twin test- Majority in number representing 75% in value of members present and voting
 - Creditors: 75% in value (reduced from existing 90%)
- Rule making power granted to CG to prescribe procedure for FTMs
- Requirement of OL's report omitted in case of demerger

Treatment of 'Treasury Shares' held prior to CA, 2013 [Sec. 233A]

- New section 233A introduced for treatment of 'Treasury shares' held prior to CA, 2013
- 3 years sunset period introduced for existing treasury shares
 - post the period such shares cannot carry any voting rights
- Consequences of non compliance-
 - Shares shall be cancelled or extinguished (Capital reduction)
 - Penalty of Rs. 10,000/- per day on company and every officer in default
- CLC Report recommended the requirement of disposal of treasury shares.

Valuation [Sec. 2(74A) & 247]

- Definition of valuer inserted [Sec. 2(74A)] - person registered as valuer u/s 247
 - Following persons can be registered valuers:
 - having qualifications/experience as prescribed by IBBI
 - member of RVO
 - holding CoR as valuer
 - IBBI designated as “Valuation Authority” and entrusted with the powers to grant certificate to RVs and RVOs, formulation, enforcement and monitoring of valuation standards
 - IBBI to prescribe valuation standards, to be adhered to by RVs
 - Penal and appeal provisions inserted for contravention of Section 247
 - Several powers, including those for regulation making, are proposed to be given to IBBI.
- Professional association of 5 types viz.** auditor, secretarial auditor, cost auditor, registered valuer, IP
- The one most difficult to understand is valuer relationship.
 - Valuation is not a professional association; it is a mere one-off engagement
 - A mere one-off valuer engagement does not seem strong to disentitle a person from being a director for 3+ running year
 - Appointment of valuers:
 - Audit Committee or Board, if required by the Act; prescribed person otherwise
 - Valuer not to be conflicted
 - 247 (2) (d) puts an important limitation - valuer not to be “directly or indirectly” interested in “the asset”
 - this applies 3 years before the valuation, as also 3 years after the valuation
 - Offence of RV provisions is liable to imprisonment **and** fine, which means it is a non compoundable provision

Striking off [Sec. 248-252]

- Grounds for striking rationalised to include companies which, in the preceding 2 FYs and current FY -
 - not carrying on any business or operation;
 - have no significant accounting transactions;
 - non-filing of annual returns and financial statements for 2 FYs preceding the previous FY
- CG to prescribe rules for manner of extinguishment of assets and liabilities
- Violation for frivolous *suo moto* application for strike decriminalised
 - fine of 1 lac → penalty of 50k
- Appeal provisions modified:
 - Appeal to RD, instead of NCLT for restoration of names struck-off by RoC - aggrieved person can apply for restoration within 3 years [[CLC Report](#)]
- Absence of significant accounting transaction becomes a reason for the RoC to strike off
 - What is significant accounting transaction? - Sec 455 -
 - filing fees
 - legal fees - e.g, trade license
 - allotment of shares to fulfill the requirements of this Act;
 - payments for maintenance of its office and records - eg., rent; and
 - **receipt or payment not relatable to the business or operations of the company**
- Transactions mean P/L items or even balance sheet items? The 5 clauses about are all P/L items
- There may be property owning companies which barely have any operations or rentals
 - say land banks
 - Or pure holding companies
- Sec 455 puts twin conditions - not carrying any operations and not having significant accounting transaction
- Sec 248 as proposed is only referring to significant accounting transaction

Auditors (1/2) [Sec. 139, 148, 204]

Statutory auditor

- CG to prescribe classes of companies exempted from statutory audit
 - *this may be a very significant provision, as UK has for several years exempted small cos from audit requirement*
- Enabling provision added for multi-disciplinary firms to be appointed as statutory auditors:
 - each partner to be member of some professional institute/body in India
 - majority partners qualified to be auditors

● Non-audit services:

- First proviso says, for a prescribed class of cos., auditors not to provide non-audit services at all
- Second proviso: Restriction on auditor/audit firm to provide non-audit services to Co./parent/subsidiaries
- applicable for 3 yrs from completion of auditor's tenure
- Decriminalize and streamlining of penal provisions for:
 - appointment of auditor/filling up casual vacancy, recommendation by AC
 - special notice for removal
 - vacation of auditor due to disqualification
 - remuneration of auditor, attendance in AGM

Secretarial and Cost Auditors (1/2) [Sec. 139, 148, 204]

Cost auditor & Secretarial Auditor

- CG to prescribe cost accounting standards in consultation with ICAI
- Firm name may be used, if majority of partners are PCMA/PCS
 - All partners should be registered with a statutory body viz. ICAI/ICMAI/ICSI

Making way for multi-disciplinary firms to be appointed as secretarial auditors

- Penal provisions streamlined and decriminalized for technical/procedural defaults.

Directors and KMPs (1/4)

- **Independent Directors:** Ineligibility to be appointed as an ID u/s 149:
 - **anomalies in the existing conditions of independence getting corrected:**
 - several provisions were earlier backward looking; now they will capture the current FY too - 149 (6) (e)
 - association with the Company/parent/subsidiary/associate company as KMP or employee
 - association as employee/proprietor/partner with the firm of statutory/**secretarial auditors**/legal/consulting firm
 - for not just “3 FYs immediately preceding the FY” but also “**during the current FY**”
 - professional relationships vitiate independence if the firm’s revenues to the extent of 10% or more come from the auditee:
 - <10% threshold may be prescribed for legal/consulting firms [CLC Report recommended 5%]
 - Director associated with a professional firm having ≤10% (or lesser) of gross turnover from the company may continue only if the threshold remains satisfied during the cooling-off period.
 - Cooling-off restriction of 3 years extended to holding/subsidiary/associate
 - *the prevailing notion that the cooling off is applicable only if the person intends to come back as an ID - remains unaddressed*
 - Clarificatory addition(s):
 - Period served as additional director to be counted in ID tenure - CLC Report recommended inclusion of such period intervening between the ID’s initial appointment as an additional director and the regular appointment in a subsequent general meeting, to the ID’s total tenure of 5/10 years, as the case may be.
 - ID to ensure continuous fulfillment of eligibility conditions

Directors and KMPs (2/4)

Section 161

- Term of additional director/casual vacancy director reduced:
 - Next GM, or 3 months from appointment; **whichever is earlier.**

Earlier applicable to listed entities, is not extended to all companies - this will mean a company will be forced to call a GM within 3 months of appointment

- Restriction on appointment of person whose appointment was rejected in general meeting as -
 - additional/casual vacancy/alternate director
 - w/o prior approval of members

Whether “could not be approved” includes lapse of time as well?

■ Allotment of DIN

- Director must have valid and active DIN at the time and during the term of his appointment.

■ Compliances post allotment of DIN-

- Submit requisite information towards verification of his particulars to the CG at such intervals as may be prescribed [Sec. 154(2)]
- Circumstances of deactivation/cancellation of DIN:

Information u/s 154 (2) not provided	Deactivation	Not function as director until reactivation
DIN allotted in contravention of Sec 154	Cancellation	Office to director to be vacated
Director incurs disqualification u/s 164	Surrender	Rules to be prescribed for restoration

Directors and KMPs (3/4)

Disqualifications of Director

- Clarification - Alignment of Sec 164(1)(g) with decriminalised provisions of Sec. 188
- statutory/secretarial/cost auditor/ RV/ IP of the company/parent/subsidiary/associate appointed u/CA, 2013 or IBC, 2016
 - during the immediately preceding 3 FYs or current FY
- Not a 'Fit and Proper Person' as per the Board
 - criteria for "fit and proper" to be prescribed

As for fit and proper criteria, if the Board/NRC do not find a person fit or proper, the question of even considering the appointment does not arise - this is more like an eligibility filter, not a disqualifier.

If the intent is to say that any time during the term, the remaining directors may declare one of them not to be fit/proper, it may give rise to corporate control battles

- Period of non-filing of financial statements or annual returns reduced to ensure companies are more diligent in filing such documents within time - from "3 FYs" to "2 FYs"
- Default u/s 164(2) will lead to vacancy of office in every company where he is a director (including the company which is in default under that sub-section), after
 - six months from the date of incurring such disqualification or
 - upon expiry of his tenure in such company, **whichever is earlier**

Directors and KMPs (4/4)

- CG to specify a lower number for max. directorships, for certain classes of companies
- Decriminalisation of offences w.r.t duties of director
 - except attempt to achieve undue gain for himself/relative/partner/associate u/s 166(5)

Resignation of a whole-time non-director KMP [Sec. 203A]

- A whole-time KMP of a company, who is not a director
 - may resign giving notice in writing to the company,
- Board to take note and to intimate the RoC:
- In case of failure to intimate RoC by Board, said KMP may forward a copy of his resignation along with detailed reasons for his resignation to the RoC
 - Obligation on company to intimate resignation for KMPs whose appointment was intimated [CLC]
- Resignation takes effect from the date on
 - which the notice is received by the company or the date, if any, specified by such KMP in the notice, **whichever is later.**
 - Harmonising with provisions of Sec. 168 [CLC Report]
- Such KMP will be liable even after his resignation for the default for which he was liable during his tenure.

In our view, the only way to align this with employment contracts is to say that for giving the notice u/s 203A, the KMP shall have to adhere to the employment contract.
- Likely in the light of Kerala HC's judgement in the matter of Greevas Job Panakkal v. Traco Cable Co., 2023 Limited - Kerala HC

Meeting of Board and its powers

- For OPC/dormant/small companies:
 - Existing: 1 meeting in each HY (min. gap of 90 days)
 - Proposed: 1 meeting in calendar year
- Disclosure of interest in MBP-1 required:
 - First BM
 - Whenever there is any change
 - ~~First BM of every FY~~
- Loan to director/director interested entities to include LLPs in which director/relative is a partner
- Decriminalisation of following w.r.t loans, investment, guarantee by company:
 - Maintenance of register in form MBP-2
 - Providing loan/guarantee/security despite subsisting default in repayment of deposits
- Penalty of Rs. 2 lacs for failure to maintain register of contracts or arrangements with a related party u/s 188 or in which directors are interested

Digitisation

- CG to prescribe such class of documents to served only electronically by certain classes of companies.
 - Member may request for physical delivery upon payment of fees - for any GM, incl. EGM
 - CLC Report recommended facilitation of communication in electronic form.
- Redundant reference of powers of SEBI u/s 458(1) omitted
- Powers to prescribe certain class of companies that will be required to maintain a website, an email address and other modes of communication [Sec 12A]
 - Details of website, e-mail address and other modes of communication, and the changes therein shall be intimated to the Registrar in the prescribed manner and timeline
 - Whether existing companies already having a functional website required to intimate to RoC?
- Enable holding of AGM and EGM in fully physical/ virtual/ hybrid mode in the manner prescribed under the rules [Sec 96 and 100]
 - Mandatory to hold AGM in physical mode atleast once in every 3 years
 - No. of members referred to in sec 100(2) may put requisition for the meeting to be held in a hybrid mode
 - For fully virtual EGMs, notice period to be reduced from 21 clear days to 7 days or such period and manner to be prescribed by the rules
 - CLC Report recommended the same owing to the *multifarious benefits* of holding GM electronically
- In case of specific requisition by members to hold meeting in hybrid mode, mandatory to conduct meeting in such form
- Similar provision for EGM

Miscellaneous

- NCLAT empowered to hear appeals against order of IBBI.
- Provisions of Sec. 425 - punishment for contempt to apply, instead of penal provisions for contravention of following:
 - Alteration of MoA/AoA in contravention of NCLT's order u/s 242 (O&M matter)
 - Restriction imposed by NCLT on issue/transfer of securities u/s 222
- Following new disclosures in **Board's Report** [Sec. 134]
 - composition of AC, instances of non-acceptance of recommendations of AC, along with reasons
 - explanation/comment by Board on observations/remarks of auditors on:
 - financial transactions having adverse effect on company
 - maintenance of accounts, and related matters
 - In addition to existing requirement, in the form to be prescribed
- RD includes Additional/Joint/Deputy RD [Sec. 2(73A)]
- CG to prescribe rules for applying to RD for realignment of FY to April 1 to March 31
 - Any other co/ body corp on commercial considerations can make application other than the co whose FY is proposed to be changed
 - CLC Report clarifies the objective is for entities which cease to be associated with a foreign entity.
- Declaration by CA/CS/CMA/Adv. required only when such professional(s) are appointed
- Penalty for name reservation by furnishing incorrect information reduced from upto 1 lac to fixed 50k.
- **Trust not to be recognised as member** [Sec 88(2A)]
 - Principle of CA 1956, that no notice of trust shall be taken in the register of members, subsequently removed in CA 2013, proposed to be inserted again
 - Quite likely, the trigger may have been FATF concerns, to ensure that beneficial ownerships are not garbed under the so-called notice of trust.
 - The FM's statement on the intent of moving the Bill says "clarification that a trust shall be registered as a beneficial owner and trustee shall be registered as a member in the register of members of a company"
 - If the trust is regarded as BO, the very purpose of identification of the natural persons as the BOs will be lost
 - CLC Report recommended specific provision expressly prohibiting trust in RoM.

Easier penalty regime

Adjudication of Penalties

- Assistant Registrar additionally may be appointed as adjudicating officers for adjudging penalty
- Even for existing offences, a scheme for withdrawal/transfer of existing litigation to adjudication trails to penalty regime, to be prescribed by CG [Sec 454(10)]
- CG to notify additional appellate authority in addition to RD, not below the rank to Joint Director
 - penalty order appealable to either RD or an appellate authority as notified by the Govt
- Appointment of Recovery officer for recovering penalty under the Act from persons who fail to pay with power to attachment and sale of movable and immovable property [*Newly Inserted Sec 454B*]
 - *enforcement of penalty orders becomes more stringent - Recovery Officer may seek assistance of local district administration to recover penalty imposed*
- Constitution of “Specified Authority” for conducting the settlement proceedings for contraventions which shall be liable for penalty under Act [*Newly inserted Sec 454C*]
 - It seems this is in lieu of the adjudication regime - similar to SEBI Settlement Proceedings

Dormant Co.

- **Dormant Companies [Sec. 455]**
 - Inactive companies to **mandatorily** apply for dormant status
 - Non-filing of financial statements **or** annual returns - inactive (earlier: and)
 - “Significant accounting transaction” to excludes receipt or payment not relatable to the business or operations of the company

Compounding & Fraud limits enhanced

- Monetary threshold enhanced for hearing compounding application by RD:
 - **Rs. 25 lacs → Rs. 1 cr**
- Increase in limit of amount involving fraud [Sec. 447]
 - The threshold for applicability of fraud leading to minimum 6 months imprisonment increased to 25 lacs instead of 10 lacs. Any fraud involving an amount lesser than that also liable to face imprisonment which can extend to 5 years and/or fine of 1 crore rupees (earlier 50 lacs rupees).

Directions, Circulars by CG

- CG reserves the power to issue guidelines circulars and directions, for clarifying the intent of a provisions or laying out the procedural requirement with or without holding consultation with experts [*Newly inserted Sec 466A*]
 - clarify intent of any rule, or
 - laying down procedural requirement ancillary to any rule
- CG may make rules and prescribe penalty for contravention thereof
 - Max. 5 lac
 - Max. further penalty of Rs. 5k/day
 - To be levied on Co./OID

Decriminalisation provisions (1/5)

Section	Action	Existing Fine	Proposed Penalty	Discretion Available?
26(9)	Prospectus issued in contravention of provisions of section 26	Company & person party to issue- 50,000 to 3,00,000	Company & person party to issue- 2,00,000	No
40(5A)	Failure for filing application and obtaining permission before making public offer and failure to disclose in the prospectus to disclose such SE in which securities have to be dealt with	Company - 5 lakh - 50 lakh OID - 50,000 - 3 lakh	Company - 25 lakh OID - 2 lakh	No
68(11)	Failure to comply with the provision of buy-back of securities	Company - 1 lakh - 3 lakh Company - 1 lakh - 3 lakh	In case Company is listed: Company - 25 Lakh OID- 5 lakh In case Company is Unlisted: Company - 2 lakh OID - 2 lakh	No

Decriminalisation provisions (2/5)

Section	Action	Existing Fine	Proposed Penalty	Discretion Available?
99	Default in complying with the provisions from section 96 i.e., Annual General Meeting <i>[existing provisions provide for non-compliance with sections 96-98]</i>	Company & OID - upto 1 lakh In case of continuing default - 5,000 per day	Company & OID - 1 lakh In case of continuing default - 5,000 per day upto: Company - 2 lakh OID - 50,000	No
128(6)	MD, WTD, CFO fails to comply with Section 128	50,000 - 5,00,000	5,00,000 - listed company and 50,000 -any other company	No
Proviso to section 128(6)	MD / WTD in finance / CFO or any other person charged by board with the duty of complying with provision of section 128 (1) - keeping BoA at reg office & branches Sub-sec (5) - BoA to be maintained for atleast 8 yrs in good order	50,000-5,00,000	In case of listed Company- 20,00,000 In case of other Company- 5,00,000	No

Decriminalisation provisions (3/5)

Section	Action	Existing Fine	Proposed Penalty	Discretion Available?
147(1)	<p>Punishment for contravention of provisions of sections 139 to 146</p> <ul style="list-style-type: none"> -Failure to appoint Auditor -Failure to appoint auditor in case of casual vacancy -Failure to take recommendations of Audit Committee for appointment of Auditor -Failure to comply with the provisions of special for appointment of auditor other than retiring auditor or expressly providing expressly that retiring auditor shall not be re-appointed - Vacation of office in case of incurring of disqualification as mentioned in section 141(3) - Failure to comply with provisions of remuneration to auditor 	<p>Company- 25,000 - 5,00,000</p> <p>OID - 10,000 - 1,00,000</p>	<p>Company - 1,00,000</p> <p>In case of continuing default 500 per day upto 5,00,000</p> <p>OID - 25,000</p> <p>In case of continuing failure 200 per dy upto 1 lakh</p>	No
148(8)	MD / WTD in finance / CFO or any other person charged by board fails to comply with provision of section 148(1)	<p>In case of Company- 25,000- 5,00,000</p> <p>In case of OID- 10,00 - 1,00,000</p>	<p>In case of listed company - 5, 00, 000</p> <p>In case of other company - 50,000</p>	No

Decriminalisation provisions (4/5)

Section	Action	Existing Fine	Proposed Penalty	Discretion Available?
148(9)	<p>Failure to appoint cost auditor</p> <p>Failure to furnish cost audit report with C.G.</p> <p>Failure to furnish further information or clarification sought by the C.G.</p>	<p>In case of Company- 25,000-5,00,000</p> <p>In case of OID- 10,00 - 1,00,000</p>	<p>Company - 10,00</p> <p>In case of continuing default- 100 per day upto 2,00,00</p> <p>OID- 10,000</p> <p>In case of continuing default 100 per day upto 50,000</p>	No
166(8)	Default in complying with Section 166 except sub-section (5)	Director - 1,00,000 - 5,00,000	<p>Listed company - 5,00,000</p> <p>Any other Company - 2,00,000</p>	No
167(2)	In case a Director continues 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	Director - 1,00,000 - 5,00,000	<p>Listed company - 5,00,000</p> <p>Any other Company - 2,00,000</p>	No

Decriminalisation provisions (5/5)

Section	Action	Existing Fine	Proposed Penalty	Discretion Available?
186(14)	Failure to maintain register as prescribed under section 186(9) and available for inspection at the registered office of the Company under section 186(10)	Company- 25,00-5,00,00 OID- 25,000 - 1,00,00 Imprisonment upto 2 years	Company- 1,00,000 In case of continuing default- 500 per day upto 5,00,000 OID - 25,000 In case of continuing default 200 per day upto 1 lakh	No
206(7)	Fails to furnish any information or explanation or produce any document as required under section 206	Company and OID- upto 1,00,00 In case of continuing default 500 per day	In case of Company - 1,00,00 In case of continuing default- 500 per day upto 5 lakh In case of OID- 25,000 In case of Continuing default- 200 per day upto 1,00,000	No

Strengthening NFRA

NFRA constitution and powers were recently discussed in a Delhi HC order, subsequently cleared by SC ruling of March 2025

- NFRA be a body corporate
- NFRA can also prescribe the Standards on Auditing for bodies corporate.
- Chairperson shall have general superintendence and direction over the affairs of NFRA
- Chairperson can exercise the powers as delegated to him by executive body
- Pursuant to recommendations in the [CLC Report](#)

Powers of NFRA

- In addition to the existing powers being exercised by the NFRA in case professional or other misconduct is proved, NFRA can issue:
 - Advisory/Warning/Censure
 - Require additional professional training
 - Refer matter to Central Government for taking action

Enforcement and Penalty

- In case of non-compliance with the orders of NFRA or failure of payment of penalty, that person be punishable with:
 - Imprisonment/Fine/Further debarment

Administrative Provisions

- NFRA shall meet in such manner as specified by regulation by the said authority.
- NFRA may appoint secretary and other employees and salary, allowances and other terms and conditions shall be as specified by regulations by said authority
- Accounts of NFRA be audited by the Comptroller and Auditor-General of India
- Validity of proceedings of NFRA shall not be invalidated merely by reason of:
 - Vacancy or defect in constitution of Authority
 - Defect in appointment of member
 - Procedural irregularity(not affecting merits of case)

Legal provisions governing NFRA framework (1/3)

Intimation and Filing with NFRA- 132A

- Auditor of companies prescribed in 132 (4) (a) of the Act must intimate registration details with ICAI to NFRA
- Auditors shall file such documents and returns in such form and manner as specified by regulations by the said authority
- Payment of fees by auditors to NFRA: sec 132I

Penalty for Non-Compliance

- Minimum ₹25000
- ₹500 per day for continuing default
- Maximum ₹25 Lakh (for auditor/audit firm)

Furnishing False Information

- If auditor while performing functions:
 - Knowingly furnishes false document / return / information,or
 - Omits material facts,or
 - Alters/suppresses/destroys documents

Penalty

In such case he be liable for:

- Minimum ₹50000
- ₹1000 per day for continuing default
- Maximum ₹50 lakh

Legal provisions governing NFRA framework (2/3)

There shall be constituted a Fund, to be called the **National Financial Reporting Authority Fund. - 132B**

Sources of funds

- NFRA Fund shall be credited by following sources:
 - Grants made by C.G.
 - Fees received by the Authority
 - Sums received from other sources as stated by the C.G.
 - Interest or other income received out of the investments made by NFRA

Utilisation of Fund

Funds in the NFRA Fund can be utilised for the following purposes:

- To meet expenses of NFRA for discharging its functions
- For the purposes of this Act
- Such other purposes, as may be prescribed.

Power to issue directions - 132C

NFRA may issue directions to the auditors / class of companies as prescribed for the following purposes:

- in the public interest or interest of investors or creditors or other persons concerned.
- Penalty consequences be imposed upon the whoever fails to comply with the directions of NFRA

Power to impose penalty - 132D

- NFRA may impose such penalty as it may consider appropriate after:
 - Holding inquiry;
 - Giving reasonable opportunity of being heard
- For this purpose, NFRA can summon and enforce attendance of any person to give evidence or any document.

Legal provisions governing NFRA framework (3/3)

Bar on Jurisdiction - 132E

- No civil court shall have any jurisdiction over any matter on which NFRA has the authority under this Act.
- Civil jurisdiction completely barred; the issue then is, where does one appeal against decision of NFRA?
- Appeal against NFRA order goes to NCLAT- sec 132 (5)

Protection from action taken in good faith - 132F

- No action can be taken against any CG / NFRA / chairperson / member or officer / or other employee
 - for actions done in good faith or intended to be done under this act or rules or regulations made thereunder.

Power of CG to give directions to Authority - 132G

- NFRA be bound by directions of CG on questions of policy
- NFRA be given opportunity before giving any direction.

Power of CG to supersede Authority - 132H

- CG has the power to supersede the NFRA for period not exceeding six months on existence of conditions as specified.

Levy of fees - 132I

- NFRA shall levy such fees or charges as specified by it in the regulations

Power to make regulations - 132J & 132K

- NFRA has been given the authority to make regulations consistent with the Act and the rules made thereunder.
- NFRA before issuing regulations shall ensure transparency by:
 - publishing draft regulations and inviting comments on it
 - reviewing such regulations at least once in three years

CONTACT US

Vinod Kothari and Company

Kolkata:

Anjaneyam,
B42, Metropolitan Cooperative
Housing Society, Kolkata 700105
Phone: 033 4501 7864/2323
3742
Email:
corplaw@vinodkothari.com

New Delhi:

Ras Vilas, 501 & 501A, Salcon
Rasvilas, District Centre, Saket,
New Delhi - 110017
Phone: 011 4131 5340
Email: delhi@vinodkothari.com

Mumbai:

403-406, Shreyas Chambers
175, D N Road, Fort
Mumbai - 400001
Phone: 022 4005 6953/2261 4021
Email: bombay@vinodkothari.com

Bengaluru:

Rent A Desk
4, Union Street, Infantry Rd,
Shivaji Nagar, Bengaluru- 560001
Email: corplaw@vinodkothari.com

Reach us on social media:

