

First Notes



MCA notified certain provisions of the Companies (Amendment) Act, 2020

13 January 2021

First Notes on

Financial reporting

Corporate law updates

Regulatory and other information

Disclosures

Sector

All

Banking and insurance

Information, communication, entertainment

Consumer and industrial markets

Infrastructure and government

Relevant to

All

Audit committee

CFO

Others

Transition

Immediately

Within the next three months

Post three months but within six months

Post six months

Forthcoming requirement

Introduction

The Ministry of Finance introduced the Companies (Amendment) Bill, 2020 (the Bill) which proposed extensive amendments in the Companies Act, 2013 (2013 Act). On 19 September 2020, Lok Sabha passed the Bill and on 22 September 2020, it was passed by the Rajya Sabha.

On 30 September 2020, the Companies (Amendment) Act, 2020 (2020 Act) received the assent of the President of India. The 2020 Act incorporates amendments suggested by the Company Law Committee (CLC) in its report.

Further, on 21 December 2020, the central government notified certain sections of the 2020 Act.

This issue of First Notes provides an overview of the notified sections of the 2020 Act.

Overview of the amendments

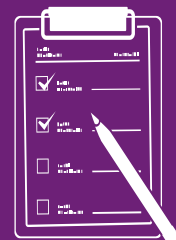
Part I

Decriminalisation of certain compoundable offences i.e., rationalisation of 46 compoundable offences and adoption of a principle - based approach to decriminalise the offences.



Part II

Amendments relating to rationalisation of penalties.



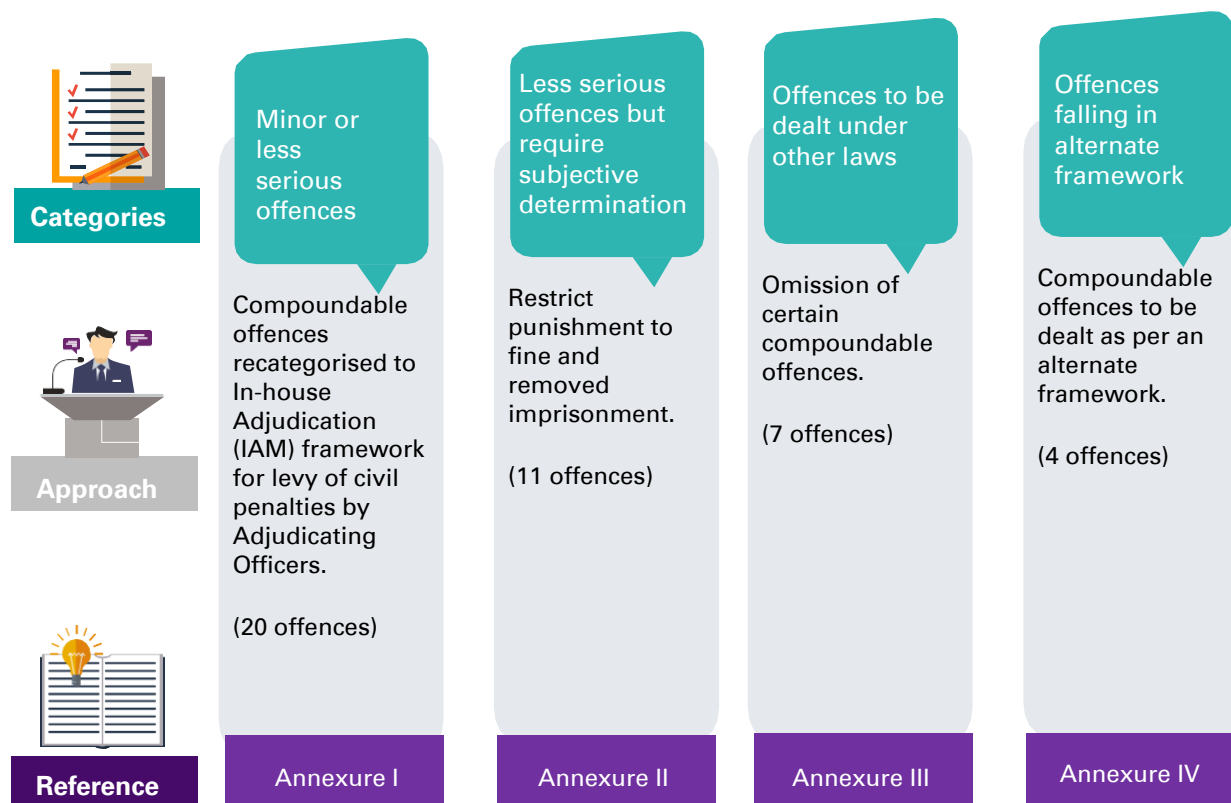


Part I: Decriminalisation of certain compoundable offences

The 2020 Act introduced amendments relating to 46 compoundable offences under the 2013 Act. With an aim to strike a balance between civil and criminal liabilities, the 2020 Act decriminalised and reclassified 46 offences.

The reclassification helps ensure that serious violations of law would be dealt under the criminal law, whereas procedural, technical and minor non-compliances would be assigned to civil jurisdiction. This would likely to help declog the criminal justice system by reducing burden on special courts in India. Further, on 21 December 2020, MCA notified sections relating to 42 offences out of 46 offences.

The chart below summarises the amendments to 42 offences into four categories.



Part II – Changes in penalties

The 2020 Act rationalised penalties in respect of the following six sections:

Default	Revised penalty
Failure or delay in filing notice for alteration of share capital (Section 64)	The penalty in case of a default that continues has been amended to be reduced to INR500 per day instead of INR1,000 per day. Further maximum penalty has been capped at INR5 lakh in case of a company and INR1 lakh in case of an officer in default instead of fixed amount of INR5 lakh.
Failure or delay in filing annual return (Section 92)	The penalty amount for a failure or delay in filing an annual return at the first instance of failure or delay has been reduced to INR10,000 from INR50,000. In case a default continues, the maximum penalty has been capped at INR2 lakh in case of a company and at INR50,000 in case of an officer in default instead of fixed amount of INR5 lakh.
Failure or delay in filing of certain resolutions or agreements to ROC (Section 117)	The penalty amount for failure or delay in filing of certain resolutions or agreements to the Registrar of Companies (ROC) at the first instance of failure or delay would be reduced to INR10,000 from INR1 lakh. In case a default continues, the penalty has been fixed as INR100 per day subject to the maximum penalty of INR2 lakh in case of a company and at INR50,000 in case of an officer in default.

Default	Revised penalty
Failure or delay in filing of the financial statements with ROC (Section 137)	The penalty amount for or delay in filing financial statements with the ROC at the first instance of failure or delay has been fixed to INR10,000 instead of INR1 lakh. In case the default continues, the penalty has been fixed as INR100 per day subject to the maximum penalty of INR2 lakh in case of a company and INR50,000 in case of an officer in default.
Failure/delay in filing statement with the company or ROC by an auditor after resignation (Section 140)	The maximum amount of penalty for failure or delay in filing a statement by an auditor after resignation with the company or ROC has been capped at INR2 lakh instead of INR5 lakh.
Accepting directorships beyond specified limits (Section 165)	The penalty for each day's default of accepting directorships beyond specified limits has been reduced to INR2,000 from INR5,000 and a maximum penalty has been INR2 lakh for the defaulting directors.

Our comments

On 18 September 2019, MCA constituted CLC to review sections on offences under the 2013 Act. The CLC contemplated on various matters in addition to review of offences under the 2013 Act i.e., introducing a mechanism to reduce burden on courts and effective disposal of cases, improving functioning of authorities under the 2013 Act and changes aimed at promoting the ease of doing business in India. Accordingly, on 14 November 2019, CLC submitted its report to MCA, recommending changes in the 2013 Act.

Based on the recommendations of the CLC in its report, the Ministry of Finance introduced the 2020 Act to amend the 2013 Act. On 21 December 2020, MCA notified certain sections of the 2020 Act to address the concerns related to 2013 Act.

Some of the key changes notified recently are:

- **Decriminalising offences:** A large part of newly notified amendments relate to decriminalising the offences under the 2013 Act. The amendments notified with an aim to decriminalise compoundable offences and civil liability that are technical or procedural in nature by adopting a principle-based approach.
- **Rationalisation of penalties:** The 2020 Act also reviewed the quantum of penalties and amended six sections considering the gravity of default. The amendments relate to contravention of provisions relating to filing of an annual return, financial statements or filing statement by auditor after resignation and contravention in accepting directorship beyond specified limits of Section 165. The changes brought by Act would allow companies to rectify the default by paying the penalty and provide such defaulting companies with the chance to become compliant with the provisions of the law.

Remaining sections – not yet notified

The 2020 Act is largely effective with the recent notification dated 21 December 2020. However, there are certain amendments relating to ease of doing business and other amendments which are not yet notified.

Following are some of the key sections which are still pending to be notified:

Provision	Amendment
Amendment to definition of a listed company	The 2020 Act amended the definition of a 'listed company' to exclude certain class or classes of companies as listed companies.
Payment of remuneration to non-executive directors in case of inadequacy of profits or in case of losses	The 2020 Act amended relevant provisions under Section 149 and 197 of the 2013 Act, to provide remuneration for non-executive directors, including independent directors, in case of inadequacy of profits like executive directors.

Our comments (cont.)

Provision	Amendment
Modifying CSR provisions	The 2020 Act exempts companies with a CSR liability of up to INR50 lakh a year from the requirement of setting up CSR committees. Further, a new proviso to Section 135(5) of the 2013 Act has been inserted. The proviso permits companies which spend any amount in excess of their CSR obligation in a financial year to set off the excess amount towards their CSR obligations in subsequent financial years.
Periodic financial results for unlisted companies	The 2020 Act inserted a new Section 129A to the 2013 Act to empower Central Government to prescribe by rules classes of unlisted companies to prepare and file periodical financial results, and to complete the audit or review of such results.
Direct listing in foreign jurisdictions	The 2020 Act empowers the Central Government to allow certain classes of public companies to list classes of securities in foreign jurisdictions.
Reviewed penalty for delay in filing the annual return or financial statement	The 2020 Act amends Section 403(1) to cover situations where there is a default on two or more occasions in submitting, filing, registering or recording of prescribed documents. These documents can be submitted, filed, registered or recorded, as the case may be, on payment of such higher additional fee as may be provided by the rules.
Exempting non-banking financial companies from filing resolutions with the ROC	Currently under Section 117(3) of the 2013 Act, banks are exempted from filing of resolutions to ROC relating to grant of loans or giving guarantees in respect of loans. The 2020 Act introduces amendments to Section 117(3) to also provide similar exemption to registered non-banking financial companies and housing finance companies.

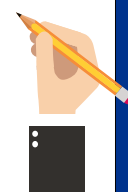
Further, provisions relating to following offences have not been notified:

- **Category: Offences shifted to IAM framework (3 offences yet to be notified)**
 - Section 124(7) - Failure to comply with the requirements given in this Section for dealing with unpaid dividend, etc.
 - Section 135(7) - Contravention of provisions of CSR and manner of dealing with any unspent amount under it.
 - Section 247(3) - Contravention of provisions relating to valuation by a valuer.
- **Category: Offences falling under alternate framework**

Section	Default	Alternative framework
Section 16(3)	Non-compliance with order of the Regional Director (RD) directing change of name of a company	Section 16(3) amended to provide that in case a company fails to abide by the order of the RD under Section 16(1) with regard to change of name of the company within three months of passing of such order, then instead of imposing punishment for non-compliance for such default, a new name would be allotted (procedure/manner to be prescribed) to the company. The company may subsequently change its name in accordance with Section 13 of the 2013 Act.

The bottom line

With the recent MCA notification, the 2020 Act is now largely effective. The new legislations and amendments introduced aim to foster improved compliance framework for the corporates in India. However, the amendments introduced by the 2020 Act relating to ease of doing business are pending to be notified. India Inc. should watch out for developments in this area.





Annexures

Annexure I: Offences shifted to IAM framework (minor or less serious offences)

Section 454 of the 2013 Act provides that the IAM (In-House Adjudication) framework is a mechanism for levy of civil penalties by Adjudicating Officers (AO). The 2020 Act notified provisions to shift 20 compoundable offences relating to minor or less serious issues to the IAM framework. In addition, the quantum of penalties prescribed by the 2020 Act are lower than the quantum of fines currently prescribed under the 2013 Act.

Following table highlights sections shifted under IAM framework i.e., following offences would now be liable to penalty instead of being punishable with imprisonment:

Section	Default
Chapter IV: Share Capital and Debentures	
Section 56(6)	Failure to comply with the procedural requirements given in the section the way the transfer of securities is required to be done.
Chapter VI: Registration of charges	
Section 86(1)	Contravention of the provision of Chapter VI dealing with duty to register charges, to report their satisfaction within prescribed timelines and the duty to maintain register of charges.
Chapter VII: Management and administration	
Section 88(5)	Failure to maintain members' register, debenture holders register and register of other security holders.
Section 89(5)	Failure to make declaration by the registered owner and the beneficial owner in respect of shares.
Section 89(7)	Company to file a return with ROC within the prescribed time after receiving a declaration of beneficial interest in shares from a person.
Section 90(10)	Failure to make declaration by the registered owner and the beneficial owner in respect of shares.
Section 90(11)	Failure on behalf of company to maintain a register of significant beneficial owners.
Section 92(6)	Contravention of the requirements under this section by a company secretary in practice.
Section 105(5)	Fine for issuance of invitation to appoint proxies (for any meeting of a company) at the company's expense to any member who is entitled to attend meeting.
Chapter IX: Account of companies	
Section 134(8)	Contravention of the requirements relating to financial statements and board's report.
Chapter XI: Appointment and qualification of directors	
Section 172	Contravention of any provisions relating to appointment and qualifications of directors.
Chapter XII: Meetings of board and its powers	
Section 178(8)	Contravention of the provisions relating to audit committee, nomination and remuneration committee, and stakeholder's relationship committee.
Section 184(4)	Contravention of the provisions mandating disclosure of interest by the director in the first board meeting every financial year or wherever there is any change in relation to any contract or arrangement.
Section 187(4)	Contravention of the provisions regarding holding of investments by a company.
Section 188(5)	Contravention of provisions regarding related party transactions by a director or employee of the company.
Chapter XIII: Appointment and Remuneration of Managerial Personnel	
Section 204(4)	Contravention of provisions mandating secretarial audit for certain classes of companies.
Chapter XV: Compromises, arrangements and amalgamations	
Section 232(8)	Failure to comply with obligations imposed by Section 232 in relation to merger and amalgamation of companies.

Section	Default
Chapter XXV: Companies to furnish information or statistics	
Section 405(4)	Non-compliance with orders of the Central Government directing a company or companies to furnish certain information. (The Central Government issues such orders under Section 405(1) or (3) to a company or a class of companies or to all companies).
Chapter XXIX: Miscellaneous	
Section 450	Fine for contravention of any of the provisions of the 2013 Act or the rules made thereunder.

Annexure II: Less serious offences but subjective determination

11 offences that are not serious violation would be based on subjective determination. The 2020 Act restricts the punishment to only fine and in case fraudulent practices are noticed further action would be taken.

Following table provides sections under the above principle:

Section	Default
Chapter II: Incorporation of company and matters incidental thereto	
Section 8(11)	Failure to comply with the requirements imposed on Section 8 companies.
Chapter III Part-I: Prospectus and allotment of securities	
Section 26(9)	Contravention of matters to be stated in the prospectus.
Section 40(5)	Default in complying with the requirements of public offer.
Chapter IV: Share capital and debentures	
Section 68(11)	Default in complying with the requirements of buy-back.
Chapter IX: Account of companies	
Section 128(6)	Maintenance of the books of accounts of the company at its registered office and its inspection thereof by any director.
Chapter X: Audit and auditors	
Section 147(1)	Default in complying with the provisions of Chapter X relating to audit and auditors.
Chapter XI: Appointment and qualifications of directors	
Section 167(2)	Default of continuing to act as a director upon becoming liable for vacation of office.
Chapter XVI: Prevention of oppression and mismanagement	
Section 242(8)	Making alteration in the memorandum or in the articles inconsistent with an order of the NCLT.
Section 243(2)	Default in complying with the directions of the NCLT regarding termination or modification of certain agreements.
Chapter XX: Winding up	
Section 347(4)	Contravention of directions of the Central Government in relation to disposal of books and papers of the company which has been wound up.
Chapter XXII: Companies incorporated outside India	
Section 392	Contravention of provisions related to foreign companies.



Annexure III: Offences to be dealt with under other laws

The 2020 Act omits following seven offences from the 2013 Act as these would be dealt under other laws:

Section	Default
Chapter IV: Share capital and debentures	
Section 48(5)	Default in complying with provisions relating to variation of the rights of shareholders.
Section 59(5)	Failure to comply with the order of the National Company Law Tribunal (NCLT) regarding rectification of register of members.
Section 66(11)	Default in publishing order of the NCLT confirming reduction of share capital.
Section 71(11)	Non-compliance with the order of the NCLT regarding failure to redeem debentures on maturity or in payment of interest.
Chapter XX: Winding up	
Section 342(6)	Non-cooperation by liquidator or other persons during prosecution in the course of winding up.
Section 348(6)	Contravention of provisions relating to information as to pending liquidations under Section 348 by a company liquidator.
Section 348(7)	Contravention of provision relating to audit of information of the company pending liquidations under Section 348 (1) by a company liquidator.

Annexure IV: Offences falling under Alternate framework

The 2020 Act notified alternate framework for following four sections to achieve the intended aim of such provisions:

Section	Default	Amendments
Chapter XXVIII: Special courts		
Section 441(5)	Non-compliance with order of the RD/NCLT for compounding of an offence	Section 441 of the 2013 Act has been amended to provide that if any officer or employee of a company fails to comply with the order of NCLT, RD, or any other officer authorised by the Central Government, then instead of imprisonment and fine both a maximum amount of fine for the offence proposed to be compounded under Section 441 would be twice the amount provided in the corresponding section in which the punishment for such offence is provided.
Chapter XX: Winding up		
Section 284(2)	Non-cooperation of promoters, directors, etc. of a company being wound- up, with the liquidator	The 2020 Act introduced a new mechanism, where a liquidator of a company may apply to NCLT for cooperation in case a person required to cooperate or assist the company liquidator does not do so. Further it empower NCLT to direct such person to comply with the directions of the company liquidator. Currently, the person who fails to discharge his obligations punishable with imprisonment and fine both.
Section 302	Dissolution of company by Tribunal	The amended provision requires the NCLT (within a period of 30 days from the date of the order) to forward a copy of the order of dissolution to the ROC who would record in the register relating to the company of the dissolution of the company. Additionally, NCLT would also direct the company liquidator to forward a copy of the order to the ROC. The provision relating to imposition of fine has been omitted.
Section 356	Powers of Tribunal to declare dissolution of company void	The amended provision requires that NCLT would forward a copy of the order, within 30 days from the date thereof, to the ROC who would record the same. Additionally, NCLT would direct the company liquidator or the person on whose application the order was made, to file a certified copy of the order, within 30 days from the date thereof or such further period as allowed by the NCLT, with the ROC who would record the same. The provision relating to imposition of fine has been omitted.

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Issue no. 53 – December 2020

The topics covered in this issue are:

- CARO 2020: Related party and non-cash transactions and material uncertainty
- SEBI seeks to improve disclosures pertaining to analyst and investor meets and conference calls
- Regulatory updates.



SEBI streamlines the framework for schemes of arrangement for listed companies

19 November 2020

On 3 November 2020, SEBI has made certain amendments to the regulatory framework for schemes of arrangements by listed companies (laid down in its circular dated 10 March 2017). The amendments relate to the following areas:

- Documents to be submitted by the listed company to the stock exchanges before the scheme is submitted to the NCLT
- Obligations of the stock exchange(s) and processing of the draft scheme by SEBI
- Conditions for companies seeking relaxation under Rule 19(7) of the Securities Contracts (Regulation) Rules, 1957 (SCRR).

This issue of first Notes provide an overview of these amendments.



Voices on Reporting

KPMG in India is pleased to present Voices on Reporting (VOR) – a series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

On 7 January 2021, KPMG in India held a session of Voices on Reporting webinar to discuss key financial reporting and regulatory matters that are expected to be relevant for stakeholders for the quarter ended 31 December 2020.

To access the presentation and recording, please click [here](#).

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