You Tube CA CFA Adithya Kiran.

CA Final Corporate and Economic Laws
Amendments Applicable for July 2021 Exams

Part-I: Companies Amendment Act, 2020
Part-II: Amendments in Rules and other applicable amendments in the Act
Part-III: Amendments in Economic Laws

Part-I: Companies Amendment Act ,2020

1. Proviso to Sec.149(9) Inserted

As per the newly introduced proviso to Sec.149(9), now the Independent Directors (ID) are entitled for remuneration, even if the company has no profits or its profits are inadequate.

Such remuneration shall be:

a) Computed in accordance with Schedule-V

b) In Addition to Sec.197(5)

Therefore, now the overall position is:

For what ID's are eligible for	For what ID is not eligible
a) Fee specified u/s 197(5) i.e., sitting fee for attending the meetings; b) Reimbursement of expenses for participation in meetings; c) Profit related commission, if the company has profits; d) Remuneration as per Schedule-V, if the company does not have profits or if the profits are inadequate.	An Independent Director is not eligible for stock options

2. Sec.165(6) Amended

After amendment, now if any director accepts appointment and if such appointment violates any provision of Sec.165, then he shall be punishable with penalty of:

- ₹ 2,000 per day;
- Maximum of ₹ 2 Lakhs.

3. Sec.167(2) Amended

After amendment now, if any director continues to hold the office even though he knows that his office becomes vacated, then he shall be punishable only with fine of ₹ 5,00,000 **without any imprisonment**.

4. Sec.172 Amended

If any company violates any provision of Chapter-XI *(Appointment and Qualifications of Directors)* and if there is no specific penalty in such provision, then following punishment attracts:

Company	Officer in Default
₹ 50,000; and	₹ 50,000; and
₹ 500 per each day	₹ 500 per each day
Maximum of ₹ 3 Lakhs	Maximum of ₹ 1 Lakh

5. Sec.178(8) Amended

Contravention	Punishable Person	Punishment
In case of any contravention of: » Sec.177: Audit Committee provisions; » Sec.178: Nomination and Remuneration and Stakeholders Relationship Committee provisions, then	Company shall be liable to pay penalty of	₹ 5,00,000
	Every officer of the company in default shall be liable to pay penalty of	₹ 1,00,000

6. Sec.184(4) Amended

If any director contravenes:

» Sec.184(1): relating to disclosure of interest in other entities;

» Sec.184(2): relating to disclosure of interest in contract or arrangement,

Then **imprisonment will not be attracted**. Only amount of ₹ 1,00,000 has to be paid and that amount is also **a penalty not a fine**.

7. Sec.187(4) Amended

Contravention	Punishable Person	Punishment
In case of any contravention of Sec.187 relating to investments to be held in the name of the company, then	Company shall be liable to pay **penalty (not fine)** of	₹ 5,00,000
	Every officer of the Co in default **shall not be liable for imprisonment** but shall only be liable to pay **penalty (not fine)** of	₹ 50,000

8. Sec.188(5) Amended

If any director or any other employee of a Co enters into any contract or arrangement by violation of Sec.188, then they **shall not be liable for imprisonment** but they shall only be punishable with **penalty (not fine)** and the amount of penalty is:

- ₹ 25 Lakhs, in case of listed company;
- ₹ 5 Lakhs in case of unlisted company.

The penalty shall be payable by such director or employee not by the company

9. Sec.197(3): Remuneration in case of Inadequate Profits

Now after amendment, if the company has no profits or its profits are inadequate, then every director (not only MD, WTD or Manager) shall be entitled for remuneration **including Independent Directors and Other Non-executive directors**.

Such remuneration shall be in accordance with Schedule-V

10. Sec.204: Secretarial Audit for Bigger Companies

Contravention	Punishable Persons	Punishment
In case of any contravention of Sec.204 relating to secretarial audit, then	» Company; » Any officer who contravenes; » Company secretary in practice, Shall be liable to pay **fixed penalty** (**not fine** and **not range bound** of minimum and maximum) of	₹ 2,00,000

11. Sec.232: Merger and Amalgamation of Companies

Contravention	Punishable Persons	Punishment
If the company fails to comply with Sec.232(5) i.e., filing of certified copy of tribunal's order with RoC, then	» Company; » Every officer of the company who is in default, Shall be liable to pay penalty	₹ 20,000; and ₹ 1,000 per day Max: ₹ 3 Lakhs

Newly imposed penalty is only for violation of Sec.232(5). Such new penalty is not applicable to violation of other sub-sections of Sec.232.

12. Sec.242: Powers of Tribunal

Contravention	Punishable Person	Punishment
In case of any contravention of Sec.242(5) i.e., Alteration of MoA or AoA in contravention of tribunal's order, then	Company shall be liable to pay fine of	₹ 1 Lakh to ₹ 25 Lakhs
	Every officer of the Co in default **shall not be liable for imprisonment** but shall only be liable to pay fine of	₹ 25,000 To ₹ 1 Lakh

13. Sec.243: Termination or Modification of Certain Agreements

Contravention	Punishable Person	Punishment
If a Managing Director, Other Director or Manager acts in spite of his agreement being terminated due to tribunal order or due to failure of fit and proper criteria, then	Such Managing Director, Other Director or Manager **shall not be liable for imprisonment** but shall be liable only to pay fine of	₹ 5 Lakhs
	Every other director who is knowingly a party to such contravention **shall not be liable for imprisonment** but shall be liable only to pay fine of	

14. Sec.247: Registered Valuer

Contravention	Punishable Person	Punishment
a) Contravention of Sec.247 relating to Registered Valuers or b) Contravention of Registered Valuers and Valuation Rules,	Valuer shall not be liable to pay **fixed penalty** (not range bound Min and Max Fine)	₹ 50,000

15. Sec.284: Company Liquidator

(1) The promoters, directors, officers and employees, who are or have been in employment of the company shall extend full cooperation to the Company Liquidator.

(2) If any of the above persons does not assist or cooperate, then the Company Liquidator may make an application to the Tribunal.

(3) On receiving the above application, the Tribunal shall, by an order, direct such persons:
- » To comply with the instructions of the Company Liquidator (CL); and
- » To cooperate with CL in discharging his functions and duties.

16. Sec.302: Dissolution of Company by Tribunal (CL).

(1) When the affairs of a company have been completely wound up, the CL shall make an application to the Tribunal for dissolution of such company.

(2) The Tribunal shall make an order that the company be dissolved.
Tribunal can pass such an order:
- » If the tribunal receives application from CL;
- » Even if the application is not received from CL, but the tribunal is of the opinion that it is just and reasonable to dissolve the company.

(3) The Tribunal shall, within 30 days from the date of the order:
(a) Forward a copy of the order to the Registrar; and
(b) Direct the CL to forward a copy of the order to the Registrar.

17. Sec.347: Disposal of Books and Papers of Company

If any person contraventions the rules that may be framed by the CG relating to disposal of books and papers relating to wound up company,
then such person **shall not be liable for imprisonment** but shall only be liable to pay fine of ₹ 50,000

18. Sec.348: Information as to pending litigations

If a Company Liquidator (who is also an Insolvency Professional) registered IBC, 2016, fails to comply with Sec.348, then such default shall be deemed to be a contravention of IBC,2016 and punishable under that code.

19. Sec.356: Declaration of Dissolution as Void

» Within 2 years of date of dissolution, the CL or any other interested person may make an application to the Tribunal.

» Such dissolution may be:
  a) As per Chapter-XX: Winding Up; or
  b) As per Sec.232; or
  c) In any other manner.

» Upon receipt of such application, the Tribunal may make an order declaring that such dissolution is void.

(2) The Tribunal shall—
(a) Forward a copy of the order, within thirty days, to the Registrar; and
(b) Direct the Company Liquidator or other applicant, to file a certified copy of the order, within thirty days or such further period as allowed by the Tribunal, with the Registrar.

20. Sec.392: Punishment for Contravention

Contravention	Punishable Person	Punishment
If any foreign Company contravenes the provisions of Chapter-XXII (Companies Incorporated Outside India), then	Company shall be liable to pay fine of	₹ 1 Lakh to ₹ 3 Lakhs; and ₹ 50,000 per day
	Every officer of the foreign Co in default **shall not be liable for imprisonment** but shall only be liable to pay fine of	₹ 25,000 To ₹ 5 Lakhs

21. Sec.393A: Exemptions under this Chapter: Newly Inserted

The CG may exempt (from the provisions of Chapter-XXII) any class of-

(a) Foreign companies;

(b) Companies incorporated or to be incorporated outside India:
- » Whether the company has or has not established, or
- » When formed may or may not establish, a place of business in India,

A copy of every notification granting above exemption shall, as soon as may be after it is made, be laid before both Houses of Parliament.

22. Sec.405: Companies to furnish Information or Statistics

Contravention	Punishable Person	Punishment
If any company: » Fails to provide information or statistics required by CG; or » Fails to provide any other information required by CG; or » Furnishes incorrect or incomplete details	Company and every officer of the foreign Co in default **shall not be liable for imprisonment** but shall only be liable to pay penalty **(not fine)** of	₹ 25,000; and ₹ 1,000 per day Max: ₹ 3 Lakhs

23. Sec.418A: Benches of Appellate Tribunal: Newly Inserted

- » The powers of the Appellate Tribunal may be exercised by the Benches.
- » Such Benches are to be constituted by the Chairperson.
- » CG may establish Benches, to hear appeals against any:
  a) Order issued u/s 53A of the Competition Act, 2002;
  b) Order issued u/s 61 of the Insolvency and Bankruptcy Code, 2016
- » A Bench of the Appellate Tribunal shall have at least 1 Judicial Member and 1 Technical Member.
- » The Benches of the Appellate Tribunal shall ordinarily sit at New Delhi or such other places as may be notified by the CG.

24. Sec.441: Compounding of Certain Offences

Which offences cannot be compounded	» Offence punishable with imprisonment only. » Offence punishable with imprisonment and with fine. » If second offence is committed within 3 years of compounding of first offence, then such second offence shall not be compounded. » Offences against which investigation is initiated or pending under CA,2013, shall not be compounded.
When the offence may be compounded	Offence may be compounded either: » Before the institution of any prosecution; or » After the institution of any prosecution.
Who can compound	» If the fine applicable to the offence does not ₹ 25 lakhs, then it may be compounded by Regional Director or any officer authorized by CG » If the fine exceeds ₹ 25 lakhs, then it may be compounded by Tribunal.
Procedure for compounding	1. An application shall be filed to the RoC. 2. RoC shall forward the application to Tribunal/RD/AO 3. Amount determined by Tribunal/RD/Authorized officer shall be paid. 4. Tribunal/RD/AO may direct the officers or employees of the Co to file the documents which has been defaulted till now. 5. An intimation shall be given by the company to the RoC within 7 days of compounding of offence. 6. No prosecution shall be initiated with respect to the offence which has been compounded. 7. Notice shall be given to the court where the prosecution is pending. 8. On giving such notice, the company and its officers will be discharged.
Consequences for not complying with the order (Amendment)	Normally, the fine payable in compounding shall not exceed the fine provided in the corresponding section under which offence is committed. **However, if an order is given by Tribunal/RD/AO asking the officer or employee of the company to file or register and such officer or employee fails to comply with such order,** **The maximum amount of fine for the offence proposed to be compounded, shall be twice the amount provided in the corresponding section.**

25. Sec.446B: Lesser Penalties for Certain Companies

» In case of non-compliance of any of the provisions of this Act by a:
  a) One Person Company,
  b) Small company,
  c) Start-up company or
  d) Producer Company, or
  e) Any of its officer in default, or
  f) Any other person in respect of such company,

the leviable penalty shall not be more than one-half of the penalty specified in such provisions subject to a maximum of:

- ✓ ₹ 2,00,000 in case of a company; and
- ✓ ₹ 1,00,000 in case of an officer in default or any other person.

(a) "Producer Company" means a company as defined in Sec.378A(l);

(b) "Start-up company" means:

» A private company incorporated under this Act or under the Companies Act, 1956

» Recognised as start-up by the Department for Promotion of Industry & Internal Trade

26. Sec.450: Punishment where no specific penalty is provided

Who contravened	» Company » Any officer of a company; or » Any other person.	
What contravened	Contravenes: » Any provision of CA, 2013; » Any rule made under CA,2013; » Any condition relating to any approval, direction or exemption	
Absence	For which no penalty or punishment is specified	
Penalty	**Company**	**Officer in default or other Persons**
	₹ 10,000 ₹ 1,000 per day ₹ Max ₹ 2 Lakhs	₹ 10,000 ₹ 1,000 per day ₹ 50,000

27. Sec.452: Wrongful Withholding of Property

(1) If any officer or employee of a company—

(a) Wrongfully obtains possession of any property or cash; or

(b) Wrongfully withholds such property or cash;

(c) Knowingly applies such property or cash for the purposes other than those specified in the AoA or CA, 2013.

» Then the company, any member, any creditor or any contributory may make a compliant.

» Court may order such offer or employee:

a) To pay fine ranging from ₹ 1,00,000 to ₹ 5,00,000; and
b) Deliver the property or refund the cash; or
c) To undergo imprisonment up to 2 years.

Imprisonment shall not be ordered for wrongful possession or withholding of a dwelling unit, if the Co has not paid to that officer or employee, any amount relating to-
(a) Provident fund, Pension fund, Gratuity fund or any other fund;
(b) Compensation or liability in respect of death or disablement payable under the Workmen's Compensation Act.

28. Sec.454: Adjudication of Penalties

» CG may appoint adjudicating officers (AO) for adjudging penalty under CA, 2013.

» The adjudicating officer may impose the penalty on the company, the officer who is in default, or any other person, for any non-compliance or default under CA, 2013;

» The AO may direct such company, or officer who is in default, or any other person, to rectify the default

» **In case the default relates to non-compliance:**
a) Sec.92(4)
b) Sec.137 (1) or (2) and

such default has been rectified either prior to, or within 30 days of, the issue of the notice by the adjudicating officer,
no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.

» The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to the parties

» Any person aggrieved by an order made by the AO may prefer an appeal to the Regional Director within 60 days.

» The Regional Director may, confirming, modifying or setting aside the order of AO.

» If the company fails to comply with the order of AO or the order of RD, within 90 days, the company shall be punishable with fine ranging from ₹ 25,000 to ₹ 5 Lakhs.

» Where an officer of a company or any other person fails to comply with the order of AO or RD within 90 days, they shall be punishable with:
  - ✓ Imprisonment up to six months; or
  - ✓ Fine ranging from ₹ 25,000 ₹ 1,00,000, or
  - ✓ With both.