

**Table of miscellaneous reporting offences 1**

SECTION	NEW LIABILITY	CHANGE
Section 53(3) - Prohibition on issue of shares at a discount	The company and every officer in default faces a penalty equal to the amount raised through the issue or INR 5 lakh whichever is less. In addition, company is required to refund all monies with a penal interest of 12%	Imprisonment dropped
Section 92(5) - Failure to file Annual Return within 60 days of AGM	The company and every officer in default faces a penalty of INR 50,000 and INR 100 for each day of continuing failure subject to a cap of INR 5 lakh	Imprisonment dropped
Section 102(5) - Failure to annex statement of 'material facts' to notice of general meeting	Every promoter, director, manager or other key managerial personnel is liable for INR 50,000 or five times the amount of benefit and INR 100 for each day of continuing failure subject to a cap of INR 5 lakh accruing to the aforesaid persons or their relatives whichever is higher.	INR 100 penalty for continuing failure added
Section 105 – Proxies	Officers in default are liable for a fixed penalty of INR 5,000	Classification from 'fine' to penalty'
Section 117 – Not filing shareholders' resolutions with registrar	Fixed penalty of INR 1 lakh subject to a maximum of INR 25 lakh for companies.  Similarly, fixed penalty of INR 50,000 subject to a maximum of INR 5 lakh for officers in default.	INR 500, subject to maximum of IN 5 lakh penalty for continuing failure added for both companies' officers and liquidator, if any.

Section 121(3) – Not filing report on AGM by listed companies	<p>Fixed penalty of INR 1 lakh subject to a maximum of INR 5 lakh for companies.</p> <p>A penalty of at least INR 25,000 subject to a maximum of INR 1 lakh for each officer in default.</p>	INR 500 penalty for continuing failure added for both companies and officers
Section 137(3) – Not filing financial statement with registrar	The MD and CFO and in their absence the responsible director or in his absence the entire board is liable for INR 1 lakh and INR 100 for each day of continuing failure subject to a cap of INR 5 lakh.	Imprisonment dropped
Section 140 - Failure by auditor to intimate registrar of resignation	A penalty equal to the remuneration of the auditor or INR 50,000 whichever is less and INR 100 for each day of continuing failure subject to a cap of INR 5 lakh.	INR 100 penalty for continuing failure added
Section 157 – Not filing Director Identification Number (DIN) with the registrar	The company and every officer in default faces a penalty of INR 25,000 and INR 100 for each day of continuing failure subject to a cap of INR 1 lakh	INR 100 penalty for continuing failure added
Section 159 – Failure by director to comply with DIN requirements	A penalty of INR 50,000 and INR 500 for each day of continuing failure	Imprisonment dropped
Section 164 – Disqualification for director	Failure to comply with the provisions relating to number of directorships in Section 165	A new ground for disqualification
Section 165 – Number of directorships	A fixed penalty of INR 5,000 for each day of contravention	Classification from 'fine' to penalty'
Section 191 – Payment to	fixed penalty on INR 1 lakh for	Classification from 'fine' to

directors for loss of office etc.	director of a company.	penalty'. Also, quantum has been enhanced from the range of INR 25,000 to INR 1 lakh to a fixed penalty.
Section 197– Managerial remuneration	A fixed penalty on INR 1 lakh for default for any defaulting persons.	Companies also liable for a fixed penalty of INR 5 lakh
Section 203 – Non compliance of KMP provisions	Fixed penalty of INR 5 lakh for companies.  A penalty of INR 50,000 and INR 1,000 for each day of continuing failure subject to a cap of INR 5 lakh for each officer in default	INR 1,000 penalty for continuing failure added for officers
Section 238 – Failure to register offer to compulsorily acquire shares from dissenters in scheme of arrangement	Directors who issue circular are liable for a fixed penalty on INR 1 lakh	Classification from 'fine' to penalty'. Also, quantum has been enhanced from the range of INR 25,000 to INR 1 lakh
Section 446B – Lesser penalties for One Person Companies or small companies.	Non-compliance pertaining to filing annual returns (Section 92); shareholders' resolutions (Section 117); and financial statements (Section 137) attracts a liability of up to half the penalty in specified sections	Imprisonment dropped
Section 454A– Penalty for repeated default	Where a company or an officer repeats a default within three years of an order imposing a penalty for such default, the penal rate shall be double.	This is a new provision to disincentivise repeat offences.

The amendment has re-categorised many of the compoundable offences by substituting fine and/ or imprisonment with penalty. Apart from absolving companies of criminal liability it has quickened the process of adjudication.

Sr. No.	Section	Type of Offence	Old Provision	New Provision	Impact
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1.	53(3)	Prohibition of issue of shares at a discount	Company liable to fine: Officer in default liable to fine and/ or imprisonment.	Company or any officer in default liable to penalty	Penalty substituted for fine and/ or imprisonment.
2.	64(2)	Failure/ delay in giving notice to ROC regarding change in share capital	Company and every officer in default liable to fine.	Company and every officer in default liable to penalty.	Penalty substituted for fine
3.	92(5)	Failure/Delay in filing Annual return with the ROC	Company liable to fine. Officer in default liable to fine and/ or imprisonment.	Company and every officer in default liable to penalty	Penalty substituted for fine and/ or imprisonment.
4.	102(5)	Failure to annex explanatory statement to Notice of GM	Promoter/ Manager/ KMP/ Director in default liable to fine	Promoter/ Manager/ KMP/ Director in default liable to penalty	Penalty being substituted for fine.
5.	105(3)	Failure to give declaration w.r.t apt. of proxies in Notice of GM	Every officer in default liable to fine.	Every officer in default liable to penalty	Penalty being substituted for fine
6.	117(2)	Failure/ Delay in filing specified resolutions with the ROC	Company & every officer in default including liquidator liable to fine.	Company & every officer in default including liquidator liable to Penalty	Penalty being substituted for fine
7.	121(3)	Failure/ Delay in filing Report of GM ( public listed company)	Company & every officer in default liable to fine	Company & every officer in default liable to penalty	Penalty substituted for fine
8.	137(3)	Failure / Delay in filing financial statements with ROC	Company liable to fine: MD, CFO/ Other Directors liable to fine or imprisonment or with both	Company & MD, CFO/ other Directors liable to Penalty	Penalty substituted for fine and/or imprisonment
9.	140(3)	Failure/ Delay by auditor in	Auditor liable to fine.	Auditor liable to Penalty	Penalty being substituted for

		intimating resignation to ROC			fine
10.	157(2)	Failure/ Delay by Company in intimating DIN of director to ROC	Company & every officer in default liable to Penalty	Company & every officer in default liable to Penalty	Penalty being substituted for fine
11.	159	Default in relation to apt. as Directors/ Failure to furnish DIN, in possession of 2 or more DINs	Director in default liable to fine and/ or imprisonment	Director in default liable to penalty	Penalty being substituted for fine and/ or imprisonment
12.	165(6)	Accepting more than 20 Directorships	Director in default liable to Fine	Director in default liable to Penalty	Penalty being substituted for fine
13	191(5)	Contravention of provisions relating to payment in case of loss of office etc.	Director in default liable to fine	Director in default liable to Penalty	Penalty being substituted for fine
14.	197(15)	Contravention of provisions relating to Managerial Remuneration	Person in default liable to fine	Person in default liable to Penalty	Penalty being substituted for fine.
15.	203(5)	Contravention in provisions relating to appointment of KMP	Company, KMP & Officer in default liable to fine	Company, KMP & Officer in default liable to penalty	Penalty being substituted for fine.
16.	238(3)	Contravention of provisions relating to registration of scheme involving transfer of shares	Director in default liable to fine	Director in default liable to penalty	Penalty being substituted for fine.

## II. Amendments in adjudication of penalties

### Section 454

The ordinance has brought in an amendment in Section 454(3), wherein the adjudication officer apart from imposing penalties on the Company and any officer in default shall also direct them to make good the default. The erstwhile provision only provided for imposition of penalty. Hence, the object of the law could not be fully realised.

The new provision 454(3) is as under:

“(3) The adjudicating officer may, by an order—

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.”;

Consequently, sub section 8 of Section 454 has also been amended. The new provision is as follows:

(8) (i) Where company fails to comply with the order made under sub-section (3) or sub-section (7) within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

(ii) Where an officer of a company who is in default fails to comply with the order made under sub-section (3) or sub-section (7) within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

## III. Imposing penalty for repeat defaults

To curb repeat of the same defaults, a new provision, Section 454A has been introduced which provides for imposition of twice the penalty provided under the **Companies Act**, in case the same default is committed within 3 years from imposition of penalty by AO or RD in respect of the first default. This is similar to Section 451.

## IV. Enhancing punishment for fraud

### Section 447

The Amendment has enhanced the maximum fine for frauds involving amount less than 10 lakhs or 1% of turnover of Company, whichever is lower. Thus, the post amendment punishment for frauds u/s 447 is as under:

Amount involved	Fine	Imprisonment
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> Lower of 1% of turnover or Rs. 10 lakhs	Amount involved upto 3 times amount involved	6 months to 10 years
> Lower of 1% of turnover or Rs. 10 lakhs	Upto Rs. 50 lakhs	Upto 5 years

## V. Declogging the NCLT

In order to reduce the multitude of cases before the NCLT and to enable it to focus on more serious and significant matters, following provisions have been amended:

Sr. No.	Section	Amendment	Old provision		New Provision		Remarks
1.	2(41)	Application to follow a different financial year by holding, subsidiary or associate of foreign company	NCLT		CG		Pending applications to be decided by NCLT
2.	14	Approval for conversion of public co. to private co.	NCLT		CG		Pending applications to be decided by NCLT
3.	441	Application for compounding of offences	Max. fine < 5 lakhs= RD	NCLT in other cases	Max. fine < 25 lakhs= RD	NCLT in other cases	

## 1. Registration of creation/ modification of charges

Sr. No.	Particulars	Pre amendment	Post amendment (charges created before effective date)	Post amendment (charges created after effective date)
1.	Time limit (with normal fees)	30 days from creation	30 days from creation	30 days from creation
2.	Time limit (with	Further 270 days	Further 270 days	Further 30 days

	additional fees)			
3.	Further extension of time	Delay to be condoned by CG  No max. time limit	6 months from effective date (1 <sup>st</sup> May 2019), with additional fees	Further 60 days with ad valorem fees

## 2. Punishment for contravention

Sr. No.	Particulars	Pre Amendment	Post Amendment
1.	Contravention of provisions relating to charge (registration, satisfaction etc.)	Company & every officer in default liable u/s 86 *	Company & every officer in default liable u/s 86(1) *
2.	Furnishing false/ incorrect information or suppressing material information relating registration of charge	NA	Any person committing the offence liable u/s 86(2)r/w Section 447 ^

\*Company liable to fine of Rs. 1 lakh to Rs. 10 lakhs and every officer in default liable to fine of Rs. 25,000 to Rs. 1 lakh and/ or imprisonment upto 6 months.

AMM