



CS Sidharth Sharma
FCS, LL.B.

Section 441.

Compounding of certain offences under the Companies Act, 2013

Types of Offences under the Companies Act, 2013

- **Compoundable offences**
- **Non-compoundable offences**

FAQs

Q-1 What are Compoundable offences?

1. Offences that are punishable with “fine only”
2. Offences that are punishable with “fine or imprisonment.

Q-2 What are Non-compoundable offences ?

1. Offence punishable with “with imprisonment only”
2. Offence punishable with “with imprisonment and fine”
3. Offences for which investigation has been initiated or is pending even if the offence

falls under the Compoundable Category

4. Offences which are Compounded and the period of three years not expired. It means that Once an Compoundable offence gets compounded , it becomes a non Compoundable offence for next 3 years in the relevant Compounded sections. It is also important to mention here that any subsequent offence committed after the expiry of 3 years from the date of compounding shall be deemed to be a first offence.

Q-3 Whom the Application for Compounding of offence needs to be filed?

1. National Company Law Tribunal or

2. Regional Director or any other officer authorized by the CG where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees.

Q-4 Can an Application for Compounding be filed if the Prosecution has been started against the offenders?

Yes, The Company and its officers can move the application for Compounding even if the Prosecution has been initiated by the Regulators.

Q-5 Is there any difference between the Adjudication of Penalties and Compounding of Offences?

Yes, Section 454 of the Companies Act, 2013 deal with Adjudication of Penalties while section 441 deals with the Compounding of Offences.

Q-6 What could be the maximum cost imposed by the NCLT or RD in an application under the Compounding of offences?

The Cost imposed cannot exceed the maximum amount of the fine which may be imposed under the relevant section.

Procedure to be Adopted for filing of Application for Compounding of offences:

1. Vetting of Secretarial Records of the Company and determine the offence and /or default occurred under the Relevant Section. Calculate the Fine and penal Provisions.

2. Check whether matter pertains to Adjudication of Penalties under section 454 or Compounding of offences under section 441.

3. If Compounding Provisions attracted, Issue atleast Seven days Notice for Board Meeting. Agenda of Board meeting must specify that :

- Specify the Section and offence committed in the agenda notice of the meeting and propose the Filing of Application for Compounding of offences before the Hon'ble NCLT or RD or any officer of CG as may be prescribed.

- Place the Draft of Compounding Application before the Board and getting it approved.

- Authorize director or any officer of the company to sign and submit the application on behalf of the company.

- To Appoint Company Secretary in Practice to appear before the Hon'ble NCLT or RD as the case may be.

Contents of Compounding Application:

1. Name and Particulars of the Company

2. Main Objects of the Company

3. Facts of the Case

4. Relevant Section which has been violated

5. Fine imposed in Relevant section

6. Proof of Default which has been made good under the relevant section

7. Prayer

Every Application should be accompanied by the Affidavit and Memorandum of Appearance and Fees

CONTACT

CS Sidharth Sharma

9811134037

Website

www.cssidharthsharma.com

Disclaimer: The content of the Article is only for the knowledge sharing and not for any legal use. Kindly refer to the relevant existing provisions of applicable Laws and regulations before making any opinion based on this article.