COMPOUNDABLE OFFENCES UNDER THE COMPANIES ACT, 2013

Non-compliance with the provisions of the Companies Act, 2013 ("Act") will entail penalties and/or imprisonment as specified under the Act. Further, offences under the Act have been classified as Compoundable and Non-compoundable offence. Compounding of offence is a process whereby the person/entity committing default will file an application to the compounding authority accepting that it has committed an offence and so that same should be condoned. The compounding authority may compound the offence and ask the defaulting party to deposit compounding fee as decided by it on case to case basis. Once the said compounding fee is paid, the defaulting will no more be treated in default of the offence which has been so compounded.

The provisions pertaining to compounding of offences under the Act are set forth under Section 441 of Act. Section 441 of the Act provides for compounding of following offences:

1. Offence punishable with fine only, or
2. Offence punishable with fine or imprisonment or both.

The following offences cannot be compounded under the Act:

1. Offence punishable with imprisonment only.
2. Offence punishable with both imprisonment and fine.

Who are compounding authorities under the Act?

Under the Act, the compounding authority shall be either Regional Director or National Company Law Tribunal. An offence shall be compounded by Regional Director where the maximum amount of fine which may be imposed for such offence does not exceed INR 5,00,000. All offences where the maximum amount of fine which may be imposed for such offence exceed INR 5,00,000 shall be compounded by National Company Law Tribunal.

Examples of offences compoundable under the Act

- Section 56 (6) – non-compliance relating to transfer and transmission of securities;
- Section 64(2) – failure notice to be given to registrar for alteration of share capital;
- Section 99 - default in holding of Annual General Meeting;
- Section 102(5) – not annexing explanatory statement to notice;

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- Section 117(2) – failure in filing of resolutions and agreements with the Registrar of Companies;
- Section 203(5) – Failure to appoint Key Managerial Personnel.

Recent Developments

In order to boost ease of doing business in India and to reduce the pendency of cases filed with courts, the Ministry of Corporate Affairs has formed an expert panel to provide a report with regard to simplification of imposition of penalties for minor violations under the Act including certain penalties related to technical defaults and corporate governance. The panel has recommended that 16 technical defaults and corporate governance offences be moved out of the ambit of courts. The panel has proposed that only fine should be levied in 12 offences and for other 4, either fine or imprisonment or both could be levied. The panel also propose to make revisions in penalties imposed on serious offences.

Where a company or its officer(s) become aware of some default under the Companies Act, 2013 it would always be advisable to avail the benefit of compounding provisions under the Act so that the company remains fully compliant with the provisions of the Act.