

Applicable compounding fees for violations under the 1956 Act

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The Companies Act, 2013 (the Act) has been drafted and designed with the overall objective of protecting investors and at the same time to have timely and proper compliance of the Act. Government intervention has been reduced drastically and left to the companies with enhanced accountability and disclosure norms. Such an initiative has come out with stringent punishment for non-compliance; the directors and key managerial personnel (KMP) are to be held responsible for both protecting the investors' funds and to simultaneously comply with all the applicable provisions of the Act.



What is an offence?

An offence is a punishable act for breaking a law or not obeying or non-complying with the law. An offence is a violation of a penal law. The term offence has been defined under the General Clauses Act, as “any act or omission made punishable by any law for the time being in force.” An offence can be classified as civil and criminal and further classified as compoundable and non-compoundable. A civil offence is an offence that arises due to a dispute between any two parties, usually of a business nature, while a criminal offence occurs when a crime is committed against the state or any statute or law. Compoundable offences are those offences where the complainant enters into a compromise, and agrees to have the charges dropped against the accused.

The Code of Criminal Procedure provides compounding as means to combine the two rival parties by compromise. Compounding of an offence

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means, in order to restore harmony between the victim and accused, they resolve their disputes amicably and peacefully.

The non-compliance of the Act may broadly be classified into (a) fraudulent activities and (b) technical in nature. Fraud, for the purposes of relevant section of the Act, in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss. Thus a non-compliance with an intention to deceive or abuse the law can be categorised as fraudulent activity, whereas a non-compliance which is technical in nature is that which is prohibited by law or expected to be complied with but for which no blame can be attached to the person who commits it.

Penal provisions in the Act

The offences committed in the Act are punishable in different ways. Some of the offences which are purely technical in nature such as non-filing of documents are punishable only with fine.

Offences which are serious in nature with criminal intention, such as acceptance of deposits in contravention of the Act or false statement in prospectus, are mandatorily punishable with imprisonment. The third type of offence is hybrid which may be punishable with fine or imprisonment or with both.

Therefore, an offence punishable under the Act with fine only may, either before or after the institution of prosecution, be compounded by Tribunal or Regional Director or any officer authorised by Central Government.

Further, any offence which is punishable under this Act with imprisonment or fine, or offence punishable with imprisonment or fine or with both, shall

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be compoundable with the permission of the Special Court.

Finally, any offence which is punishable under the Act with imprisonment only or with imprisonment and also fine shall not be compoundable.

Who are punishable under the Act?

The following are liable for punishment under the penal provisions of Act:

- The company;
- Officer who is at default as defined under the Act.

The penalty imposed by the NCLT or RD may not exceed the maximum amount of the fine which may be imposed for the offence so compounded. Provided further that in specifying the sum required to be paid or credited for the compounding of an offence, the sum, if any, paid by way of additional fee shall be taken into account.

Applicable compounding fee for non-compliance of provisions of the old Act

In a recent order, the NCLAT set aside the order of NCLT, Kolkata, on the grounds that the compounding fee of any non-compliance of any provisions of Companies Act, 1956 shall be compounded on the same lines of fine provided in the same Act.

Non-compliance of one time offence committed for the financial year ended 31.03.2014 shall be compounded in accordance with the Companies Act, 1956. Thus, the non-compliances which have occurred under the 1956 Act shall be governed by the relevant provisions/ schedules/ rules of the Companies Act, 1956 irrespective of the fact that such non-compliance was regularised by the Company after 31.03.2014 and shall be compounded accordingly.

Conclusion

From the facts above it can be concluded that an offence committed on or before 31st March 2014, which would be regularised and made good only after the said period, i.e. 31.03.2014, should be compounded under the applicable provisions of the Companies Act 1956.

An offence which was committed before 31st March 2014 and which continued even under the Companies Act, 2013 should be compounded both under the 1956 Act and the 2013 Act to the extent applicable.

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