

COMPOUNDING OF OFFENCE

Section 441 of the Companies Act, 2013

The offences, which are punishable with fine, only.	can be compounded either by Regional Director (RD) or by the National Company Law Tribunal (NCLT).
The offences, which are punishable with imprisonment only or imprisonment and fine.	cannot be compounded

UNDER WHOSE AUTHORITY SHALL A PETITION LIE:

Fine not exceeding Rs.5 Lakhs	Can be compounded by the RD or any other officer as may be authorized by the Central Government.
Fine exceeding Rs. 5 lakhs	Can be compounded by the NCLT
Any offence punishable with imprisonment or fine or with imprisonment or fine or with both	compoundable with the permission of Special Court;

NEW POINT IN SECTION 441 AS COMPARED TO SECTION 621A OF COMPANIES ACT, 1956

Section 441(3) says that in case where either the investigation has been initiated or is pending, the offence cannot be compounded.

However, in old Section 621A of Companies Act, 1956, there was no such point. In other words, offence could have been compounded notwithstanding the fact that either the investigation has been ordered or is pending against the company.

After the expiry of three years from the date of compounding of offence, if the second or subsequent offence had been committed, the same shall be treated as the first offence.

PROCEDURE:

1) Application of compounding of offence shall be made to the Registrar of Companies in Form GNL-1 who shall forward the same to together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

Following attachments will be required:

- Board resolution passed for making an application.
- **Detailed application***
- Copy of notice received from ROC

Detailed application means and includes the following:

- General profile and history of the company.
- Facts of the case i.e. nature of offence and period of default.
- How and when the Default is made good.
- Prayer to the competent authority for compounding.

2) After Compounding of offence intimation to ROC has to be made within 7 days in **Form GNL-2**.

IMPORTANT POINTS TO BE NOTED:

1. If compounding of offence has been made, no prosecution for the same offence can be made by any person (i.e. registrar/ shareholder/any person authorized by CG).
2. If compounding of offence is made after the institution of any prosecution, such compounding shall be brought by the registrar in writing to the notice of the court in which the prosecution is pending and on such notice, the company or its officer in relation to whom the offence is so compounded shall be **discharged**.
3. No compounding if the same offence is committed within 3yrs by company or officer in default. (prohibition is for the 2nd offence committed within 3yrs)
4. If the offence is committed after 3yrs by the same company or officer in default it can be compounded.
5. If default is made in filing any account/return/document the Tribunal/regional director /any officer authorized by CG as the case may be , if he thinks fit to do so, on payment of fee or/and additional fee may direct to file or register within such time as may be specified in the order and if such account/return/document is not filed within such specified time, any officer or other employee of the company shall be punishable with **imprisonment for up to 6 months or with fine up to 1 laky rupees or both**.
6. The accused can be discharged on payment of composition fee which cannot be more than the maximum fine liveable under the relevant provision.