



# The Companies Act 2013

*Enlightening Nation*

## E-newsletter

MAY, 2017

### *About the E-newsletter*

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the April month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

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## ARTICLE

### Compounding Under Companies Act 2013

#### What is Compounding....

As per the Black's Law Dictionary, to "Compound" means "to settle a matter by a money payment, in lieu of other liability." This definition thoughtfully represents the concept of Compounding as a Settlement Mechanism, a settlement by paying the penalty in lieu of facing the prosecution for the offence committed.

The Compounding provision in the Act were inserted by the Companies Amendment Act, 1988 on the recommendation of the SACHAR COMMITTEE as amended by the Companies (Amendment) Act, 2000. It was felt that leniency is required in the administration of the provisions of the Act particularly penalty provisions because a large number of defaults are of technical nature and arise out of ignorance on account of confusing, complexity of the provisions

The concept of Compounding of offences was incorporated as a measure to avoid the long drawn process of prosecution, which would save both cost and time in exchange of payment of a penalty to the aggrieved. In criminal law, the power to compound the offence is at the discretion of the victim. The immoral act cannot demand for compounding of the offence. But in corporate law, compounding is at the discretion of the offender/offending company.

When compounding is done, the prosecution is converted into fine i.e. condonation of prosecution by imposing penalty. It enables the offender company and the director / officer-in-default to avail peace and honorable discharge and avoid cumbersome trial.

#### Compounding of Offence Under Companies Act:

##### **1. Compounding Authority -**

Under Section 441. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 19 Sub-section (1) (a) and (b) 73, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by—

##### **(a) The Tribunal (NCLT)**

Or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, **by the Regional Director or any officer authorised by the Central Government,**

on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, may specify .

## 2. Maximum Amount for Compounding offences under Companies Act 2013 : -

The sum so specified shall not, in any case, 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 under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account .

## 3. Non Compoundable offences :-

(i) Its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

(ii) Nothing shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

(iii) Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with the fine, cannot be compounded .

**Explanation.**—For the purposes of this section,—

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) “Regional Director” means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

## 4. Application For Compounding Offences to -

Every application for the compounding shall be submitted electronically in **E-Form GNL-1**. to the Registrar who shall forward the same, together with his comments thereon, to the **Tribunal (NCLT)** or the **Regional Director** or any officer authorized by the Central Government, as the case may be.

## 5. Effects of Compounding -

Compounding has very significant impacts. They are as follows;

(i) Once the offence is compounded, no further prosecution shall be initiated either by registrar or shareholder or any other person in respect of that offence.

(ii) If the offence is committed for non filing of any return or document with registrar, then that return or documents needs to be filed with the registrar along with fees and additional fees as may be imposed under the order and within such time frame as may be stipulated under the order.

(iii) If any prosecution is going in any court in respect of the offence, then on successful compounding of the same, the person against whom the prosecution is going on shall be discharged.

(iv) Failure of compliance with the order of Compounding is an offence punishable with imprisonment of six months or fine not exceeding ` 100,000/- or with both.

(v) Once the offence is compounded, the intimation of compounding needs to be given to the Registrar within the period as mentioned in the order of compounding.

#### **6. Post Compounding Actions -**

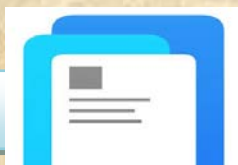
(i) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within **seven days** from the date on which the offence is so compounded.

(ii) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(ii) Where the compounding of any 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 of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged .

#### **7. Consequences if Any officer or other employee of Company failed to compile with the order of NCLT/RD -**

Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.



## **NOTIFICATIONS**

#### **G.S.R. 454(E) Companies (Acceptance of Deposits) Amendment Rules, 2017 Dated 11.05.2017 :**

In exercise of the powers conferred by sections 73 and 76 read with sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:—

1.
  - (1) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2017.
  - (2) They shall come into force on the date of their publication in the Official Gazette.
  
2. In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as the principal rules),—
  - (a) in rule 2, in sub-rule (1), in clause (c), in sub-clause (xviii), after the words “Domestic Venture Capital Funds” the words “, Infrastructure Investment Trusts” shall be inserted.

(b) in rule 5, in sub-rule (1), for the proviso, the following proviso shall be substituted, namely:—

“Provided that the companies may accept deposits without deposit insurance contract till the 31st March, 2018 or till the availability of deposit insurance product, whichever is earlier.

- **General Circular No 06/17 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017 Dated**

Pursuant to the second of the Rule 6 of the investor education protection fund authority (Accounting, Audit, Transfer And Refund Amendment Rules 2017 notifies on 27 February 2017 where the Seven years period provided under sub-section 5 of the section 124 is completed during the September 7 ,2016 to May 2017 , the due date for the transfer of such shares by companies is may 31 , 2017 .

2. The Modalities for Transfer and transmittal of shares from companies accounts to the demat account of the IEPF Authority are being finalized with the Depositories . IEPF Authority is considering to open special demat Account and till the opening Accounts the Due date of Transfer share stands extended . In view of this a revised Due Date for transfer / transmittal Share shall be Notified Soon .

3. This issues with the approval of Competent Authority .

- **General Circular No 04/17**

Clarification regarding applicability of the Section 16 (i) (a) of the Coapnies Act 2013 with references to cases under corresponding provision of companies Act 1956 : - A Representation Was Received from the Regional director Mumbai seeking Clarification as to whether RD can entertain fresh application u/s 16 of the companies Act 2013 in res[act of the application was earlier rejected by the under companies act 1956 on the ground being barred as prescribed period of 12 months had been completed it was expressed the section 16 of the companies act 2013 does not specify any time limitation .

- **General Circular No 07/17 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 Dated on 05.06.2017**

Clarity has been sought stakeholder w.r.t. issue of duplicate shares under rule 6 (3)(d) of the investor education protection fund authority (Accounting , Audit ,Transfer and Refund) Rules 2016 . it has been stated that since transfer of the share to IEPF under the Section 124 (6) of the companies Act 2013 read with rule referred above takes place on amount of operation of law hence the procedure followed in such cases and Duplicate Share need not be issued in such cases . The suggestion made by the stakeholder has been examined in the ministry and it is clarified that the procedure similar to what is followed in case of transmission of the shares may be followed by companies while transferring shares to IEPF authority pursuant to the section 124(6) Read with applicable Rules .

2. This issues with the approval of Competent Authority .

- **G.S.R. 470(E) Limited Liability Partnership (Amendment) Rules, 2017 Dated 20.05.2017 :**

In exercise of the powers conferred by sub-sections (1) and (2) of section 79 of the Limited Liability Partnership Act, 2008 (6 of 2009), the Central Government hereby makes the following rules further to amend the Limited Liability Partnership Rules, 2009, namely:—

1. (1) These rules may be called the Limited Liability Partnership (Amendment) Rules, 2017.

(2) They shall come into force with effect from 20th May, 2017.

2. In the Limited Liability Partnership Rules, 2009 (herein after referred to as the Principal Rules), in rule 37, after sub-rule (1), the following sub-rule shall be inserted, namely:—

“(1A) The limited liability partnership referred to in clause (b) of sub-rule (1) of rule 37 shall,—

File overdue returns in Form 8 and Form 11 up to the end of the financial year in which the limited liability partnership ceased to carry on its business or commercial operations before filing Form 24;

Enclose along with Form 24,—

(a) A statement of account disclosing nil assets and nil liabilities, certified by a Chartered Accountant in practice made up to a date not earlier than thirty days of the date of filing of Form 24;

(b) An affidavit signed by the designated partners, either jointly or severally, to the effect that the Limited Liability Partnership has not commenced business or where it commenced business, it ceased to carry on such business from .....(dd/mm/yyyy);

that the limited liability partnership has no liabilities and indemnifying any liability that may arise even after striking off its name from the Register;

that the Limited Liability Partnership has not opened any Bank Account and where it had opened, the said bank account has since been closed together with certificate(s) or statement from the respective bank demonstrating closure of Bank Account;

That the Limited Liability Partnership has not filed any Income-tax return where it has not carried on any business since its incorporation, if applicable.

(c) A copy of the acknowledgement of the latest Income-tax return filed under the Income-tax Act, 1961 (43 of 1961) and the rules made thereunder for the time being in force, where the limited liability partnership has carried out any business and has filed such return.

(d) Copy of the initial limited liability partnership agreement, if entered into and not filed, along with changes thereof in cases where the Limited Liability Partnership has not commenced business or commercial operations since its incorporation.

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- G.S.R. 454(E) Companies (Acceptance of Deposits) Amendment Rules, 2017 Dated 11.05.2017 :
- General Circular No 06/17 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017 Dated 05.06.2017 .
- General Circular No 04/17
- General Circular No 07/17 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016
- G.S.R. 470(E) Limited Liability Partnership (Amendment) Rules, 2017 Dated 20.05.2017 .

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