

Compounding of Offences

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Offence

- Meaning
- Cognizable & Non Cognizable
- Bailable & Non-bailable
- Compoundable & Non-compoundable

Types of Offences

- Punishable
 - With fine only
 - With fine OR imprisonment
 - With fine OR imprisonment or both
 - With fine AND imprisonment
 - With imprisonment only

Compoundable Offences

- Punishable
 - With fine only
 - With fine OR imprisonment (Compoundable with permission of Court)
 - With fine OR imprisonment or both

Who Can Complain?

- Registrar
- SEBI
- Shareholder
- Person authorised by Central Government

Limitation

- Punishable with fine – 6 months
- Punishable with imprisonment upto 1 year – 1 year
- Punishable with imprisonment upto 3 years – 3 years
- Punishable with imprisonment more than 3 years – No limitation

Meaning of Compounding

- Settlement
- Acceptance of default
- No prosecution
- Defaults of technical nature

Benefits of Compounding

- No litigation
- Personal appearance before Court
- Conviction may result in imprisonment and/or disqualification
- Can be filed even when prosecution is filed

Power to Compound

- Discretionary
- Can be done
 - either before initiation of prosecution, or
 - after the initiation of prosecution
- CLB or RD
- Possible under S. 320 of Cr PC

Procedure

- Application to ROC
- No prescribed form
- No application fee
- Forwarded to CLB or RD
- Report to CLB or RD
- Default to be made good first

Procedure

- Hearing before CLB or RD
- Factors considered while compounding
 - Nature of offence
 - Financial position of the company
 - Continuance of offence
 - Intention

Procedure

- Order to specify compounding fee (Speaking Order)
- Intimation to ROC – within 7 days
- ROC to inform Court

Issues

- Who has to apply?
- Can one application seek compounding under various sections?
- Can one application seek compounding for offence for more than 1 year?
- Is compounding fee a fine which acts as disqualification?

Issues

- What is the maximum ceiling of compounding fee?
- Should the additional fee paid be considered while determining compounding fee?
- Can company pay compounding fee on behalf of directors/officers in default?
- Can the same offence be compounded again?

Offence Committed within 3 years of compounding

- Offence u/s 159/162
 - AGM date
 - 30.09.2001 Compounded on 1.1.05
(A.R. filed on 30.12.2001)
 - 30.09.2002 Compounded on 1.1.05
(A.R. filed on 28.12.2002)
 - 30.09.2003 (A.R. filed on 30.12.2003)
- Can last offence be compounded after 1.1.05?

Issues

- Can compounding be done of offences where no penalty is specified?
- Can all applicants make one application?
- Can a director authorise another to make application on his behalf?
- Is a director who resigns still remains liable for the offence?

Thank You

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