

Significant Penalties for Non Compliance under Companies Act, 2013

By:
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[B. Com (H), FCA, DISA (ICAI), LLB]

Penalties on Statutory Auditors

- 1) He can be fined or imprisoned or can be punished with both, for **misstatement in the prospectus** unless he proves that the statement was immaterial, he has reasonable grounds to believe and did believe upto the time of issue of the prospectus that the statement was true [Section 34];
- 2) He is punishable with prescribed fine and/ or imprisonment, as the case may be, for **non compliance of the Sections 139, 143, 144 and 145** [Section 147];
- 3) He is punishable with fine or imprisonment or both for **not assisting the IO appointed by CG** [Section 217];
- 4) Punishment of imprisonment or fine or both for **falsification of books** [Section 336];
- 5) Punishment of fine and imprisonment for an **offence of fraud** [Section 447];
- 6) He shall be punishable with imprisonment and/ or fine for **deliberate act of commission or omission in the balance sheet, report, certificate, return** etc. [Section 448 and 449]

Key Managerial Personnel [Section 2(51)]	<p>Means:</p> <ol style="list-style-type: none"> 1. CEO; 2. CFO; 3. MD; 4. WTD; 5. Manager; 6. CS; 7. Other Prescribed Person 	<p>Officer in Default [Section 2(60)]: Means:</p> <ol style="list-style-type: none"> 1. WTD; 2. KMP; 3. If no KMP, then other Director(s) specified by BOD; 4. If no other Director(s) specified, then <u>all</u> the Directors; 5. <u>Any person responsible for maintenance/ filing/ distribution of accounts/ records;</u> 6. Any person who actively participates in default/ knowingly permits default/ knowingly fails to prevent to default; 7. Any person as per whose <u>advice</u>/ directions/ instructions, other Director(s) or BOD is accustomed to act [other than advice given in professional capacity]; 8. Director(s) aware of default <u>and</u> party to it; 9. Merchant Bankers/ Shares Registrar and Transfer Agents w.r.t. their functions
Officer [Section 2(59)]	<p>Includes:</p> <ol style="list-style-type: none"> 1. Any Director; 2. Manager; 3. KMP; 4. Any person as per whose directions/ instructions, other Director(s) or BOD is accustomed to act 	

Penalties on Officers in Default

1) Fine for failure to:

- ☐ **note alteration made in MOA or AOA** of Co. every copy of the MOA or AOA, as the case may be [Section 15(2)];
- ☐ **file with the ROC a return of allotment** [Section 39(4)];
- ☐ **to allot securities within 60 days** from the receipt of application money [section 42(6) & (10)];
- ☐ **keep and maintain the registers and index of members**, security holders, etc. [Section 88(5)];
- ☐ **prepare/ sign/ keep minutes** of any GM/ BM [Section 118(11)]

2) Imprisonment or fine or both for:

- ☐ **default in complying with requirements that all application monies received by the Company to be kept in separate bank account in a scheduled bank and not to be utilized for any other purpose** [Section 40];
- ☐ **issuing shares at a discounted price** (other than sweat equity shares u/s 54)[Section 53(3)];

Penalties on Officers in Default

2) Imprisonment or fine or both for:

- ☐ **contravention of sec. 73 or sec. 76** and if its wilful then penalties u/s 447 shall be leviable [Section 76A];
- ☐ failure to **register charges** on or property or assets or undertakings [Section 86];
- ☐ failure to file with an **annual return** [Section 92(5)];
- ☐ for **contravening the provisions of section 129** [on MD/ WTD/ CFO etc.];
- ☐ failure to comply with the **requirements of section 134**;
- ☐ failure to comply with the **provisions u/s 153 to 158 about DIN** [Section 159]

Compounding/ Composition of Offences

Particu-	Co. Act, 2013	SEBI Act,	SCRA, 1956	FEMA, 1999
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Following Offences are not compoundable:

- ☐ Offences punishable only with Imprisonment;
- ☐ Offences punishable with Fine and Imprisonment

Penalties	• Fine or Imprisonment or Both			offences
Applicant	• Company or Officer in Default	• Any Defaulting Person	• Any Defaulting Person	• Any Defaulting Person
Authority	• RD, if fine involved =< Rs. 5,00,000; • NCLT in any other case	• SAT; or • Court before whom proceedings are taking place		• RBI or ED before whom proceedings are taking place
When to Apply	Any time either <u>before</u> or <u>after</u> the beginning of proceedings [Same offence cannot be compounded if committed again in next 3 years]			

Power to grant immunity

Particulars	Companies Act, 2013 [Sec. 463]	SEBI Act, 1992 [Section 24B]	SCRA, 1956 [Section 23-O]
Nature of Offences [Offences under any Other Act cannot be relieved under Companies/ SEBI/ SCR Act]	<ul style="list-style-type: none">• Negligence; or• Default/ breach of Duty;• Misfeasance; or• Breach of Trust;	Violation of any provisions of this Act/ Rules/ Regulations, made thereunder	
Applicant	Any Director or Officer in Default [Co. can not be the applicant]		
Who <u>can</u> grant relief	• Court	CG only on recommendation of SEBI	
Timing of Application	Any time either <u>before</u> or <u>after</u> the beginning of proceedings	Any time <u>before</u> the beginning of proceedings	Any time <u>before</u> the beginning of proceedings

- 1. Punishment for false statement made knowingly [Section 448]:**
Defaulting person liable to punished u/s 447 [for fraud]
- 2. Punishment for false evidence given intentionally [Section 449]:**
 - Imprisonment ≥ 3 years ≤ 7 years; and
 - Fine upto Rs. 10 Lakhs
- 3. Punishment where no specific penalty or punishment is provided [Section 450]:** Fine upto Rs. 10,000 plus Rs. 1,000 per day for continuing default
- 4. Punishment for repeated default [Section 451]:**
If default is **repeated within a period of 3 years** then the amount of fine and/ or the period of imprisonment shall be twice the actual amount/ period, as the case may be
- 5. No suit, legal action, proceeding shall lie against Govt./ its Officers, if they have taken action in good faith in pursuance of this Act [Section 456]**

Various Annual Filing Forms issued by MCA

Description	Form Number
Form for filing annual return by a company	Form MGT-7
Form for filing financial statement and other documents with the Registrar	Form AOC-4
Annual accounts along with the list of all principal places of business in India established by foreign company	Form FC-3
Annual Return of a Foreign company	Form FC-4
Return of dormant companies	Form MSC-3

Form_AOC-4.pdf - Adobe Reader

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Please fill out the following form. You can save data typed into this form. Highlight Fields

☐ Chartered Accountant (in whole time practice) ☐ Cost accountant (in whole time practice)

☐ Company secretary (in whole time practice)

Whether associate or fellow ☐ Associate ☐ Fellow

Membership number

Note: Attention is drawn to provisions of Section 448 and 449 which provide for punishment for false statement / certificate and punishment for false evidence respectively.

Modify Check Form Prescrutiny Submit

For office use only: Affix filing details

eForm Service request number (SRN) eForm filing date (DD/MM/YYYY)

6. Admissibility of certain documents as evidence [Sec. 397]: Notwithstanding anything contained in any other law for the time being in force:

- ☐ any document reproduced or derived from returns and documents filed by a company with the ROC, and
- ☐ authenticated by the ROC or any other officer empowered by the CG,

shall be deemed to be a document for the purposes of this Act and **shall be admissible in any proceedings thereunder without further proof or production of the original contents/facts as evidence**

7. Appointment of Prosecutors [Sec. 443]: CG may appoint:

- ☐ generally, or
- ☐ for any specific case, in any local area,

one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act.

The persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code of Criminal Procedure

- **Non-disclosure of information in certain cases [Section 457 of Co. Act, 2013]:**

Notwithstanding anything contained in any other law for the time being in force:

- ☐ **the ROC,**
- ☐ **any officer of the Govt.; or**
- ☐ **any other person**

shall not be compelled to disclose to any court, Tribunal or other authority, the source from where he got any information which:

- a) has led the CG to order an investigation u/s 210; or**
- b) is or has been material or relevant in connection with such investigation**

Penalty for wrongful withholding of Company's Property [Section 452]

Penalty for wrongful withholding of Company's Property [Section 452]

- **Complainant:**
 1. Company;
 2. Member;
 3. Creditor;
 4. Contributory
- **Nature of Complaint:** An officer or employee:
 1. wrongfully obtained possession of Co. Property (CP);
 2. being already possessing any CP but wrongfully withholds it or knowingly applies it for unauthorised purposes
- **Complaint to be made to Court;**
- CP may come in Co.'s possession either by rent/ lease/ other legal mode [Kannankadi Gopal Krishna Nair vs. Prakash Chander Juneja]

Penalty for wrongful withholding of Company's Property [Section 452]

- **Court may order** for:
 1. Delivery of CP within specified time;
 2. Fine of atleast Rs. 1 Lakh but may extend to Rs. 5 Lakh
- Non-compliance with Court Orders may result in upto 2 years imprisonment;
- Both **Existing as well as Past** Officers or Employees covered u/s 452;
- Property obtained during employment but wrongfully withheld even after cessation of employment, complaint u/s 452 can be filed [**Baldev Krishna Sahi vs. Shipping Corporation of India Limited**]

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