

# PROCEDURE FOR COMPOUNDING OF OFFENCES BY NATIONAL COMPANY LAW TRIBUNAL

127

{Section 441(1) of the Act read with Rule 88 of the National Company Law Tribunal Rules, 2016}

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## Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Section 441
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
The National Company Law Tribunal Rules, 2016	Rule 88
e-Forms to be filed	Form GNL-1 Form INC-28

## Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Detailed application in NCLT-9 Format
- ❖ Affidavit verifying the application by company and all officers in default
- ❖ Memorandum of appearance or vakalatnama
- ❖ Evidence showing default has been made good

- ❖ Copy of show cause notice, if any received and the reply of the same
- ❖ List of directors and shareholders
- ❖ Latest audited financial statement of the company
- ❖ Proof of filing of compounding fee

### **127.1 PROCEDURE WITH MAJOR CHECK POINTS**

<b>S. No.</b>	<b>Particulars</b>
1.	<p>Note that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, whether committed by a company or any officer thereof, not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by-</p> <ul style="list-style-type: none"> <li>(a) the Tribunal; and</li> <li>(b) punishable with imprisonment or with fine</li> <li>(c) where the amount of fine which may be imposed for such offence exceed Rs. 25 lakhs {<i>Section 441(1) of the Act</i>}</li> </ul>
2.	<p>Ensure that—</p> <ul style="list-style-type: none"> <li>• the alleged offence for which compounding application shall be filed is compoundable under the Act, as offences punishable with imprisonment only, or punishable with imprisonment and also with fine, shall not be compoundable and the offence can be compounded either before or after institution of any proceeding under the Act, provided that any offence covered under section 441(1) shall not be compoundable if the investigation against such company has been initiated or is pending under the Act {<i>Section 441(6) and third proviso to section 441(1) of the Act</i>}.</li> <li>• the maximum amount of fine that can be imposed for violation of concerned offence shall be exceeding ₹25 Lakhs {<i>Section 441(1) of the Act</i>}.</li> <li>• the same offence shall not be compoundable within a period of 3 years from the last date of which similar offence was compounded either by National Company Law Tribunal or Regional Director is not compoundable {<i>Section 441(2) of the Act</i>}.</li> <li>• the default for which an application for compounding shall be filed has been made good before filing of said application.</li> </ul>
3.	<p>Complete formalities regarding calling of board meeting in the following manner:</p> <ul style="list-style-type: none"> <li>• Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting.</li> <li>• Send notice of board meeting to all the directors <ul style="list-style-type: none"> <li>- at least 7 days before the date of board meeting or</li> <li>- in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1.</li> </ul> </li> </ul>
4.	<p>Prepare following documents—</p> <ul style="list-style-type: none"> <li>• Application in format as per NCLT- 9</li> <li>• List of directors.</li> </ul>

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> <li>• Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014).</li> <li>• Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act).</li> <li>• A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with company provisions of government company and regulations in COA 2012 about COA 2012).</li> <li>• A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act)             <ul style="list-style-type: none"> <li>- shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant <b>companies</b>.</li> <li>- shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.</li> </ul> </li> </ul>
2.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form <b>DIR-2</b> (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	Forms in electronic in writing, on or before appointment, from the appointed director as Form <b>DIR-2</b> regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Incorporation and Qualification of <b>Directors</b> Rules, 2014).
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at [www.bharatlaws.com](http://www.bharatlaws.com)

**[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)**