

ADJUDICATION OF PENALTIES

*{Section 454 of the Act read with Rule 3 of the Companies
(Adjudication of Penalties) Rules, 2014}*

Synopsis

129.1 Procedure with check points	2283
129.2 Forms to be filed	2291
129.3 List of documents required	2291
Appendix 129.1 Offences liable to penalty	2292

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 454 and 454 A
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-forms to be filed	ADJ <i>(in case of appeal against the order of adjudicating officer)</i>

129.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Note that if a company or any officer of the company or any concerned person contravene any provisions of the applicable section of the Companies Act, 2013 or any earlier enactment thereof, the company and the officer in default and the concerned person, pursuant to the contravene of a concerned section-</p> <ul style="list-style-type: none"> • shall be punishable <ul style="list-style-type: none"> - with fine - with fine or imprisonment - with fine or imprisonment or with both - with fine and imprisonment • shall be liable to a penalty • shall be liable for action under section 447 of the Act (punishment for fraud) <p>Pursuant to the Companies (Amendment) Act, 2019, some of the provisions have been amended by substituting the word 'fines' with 'penalties' as violation of provisions of these specified sections should be categorised as civil liabilities because they are merely technical or minor non-compliances, which may be rectified by levy of penalty instead of filing prosecution in courts and therefore, certain offenses which were earlier punishable with fine or imprisonment or with both, are presently punishable with penalty, instead of being punishable with fine or imprisonment or with both as to promote ease of</p>

S. No.	Particulars
	doing business and unclog the criminal courts and Tribunals processes while in order to impose fine/imprisonment, one has to initiate criminal prosecution, whereas penalty needs only adjudication and the Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act and it can be stated that the Act has carved out certain sections which have been brought under adjudication process in respect of which the process compounding of offences under Section 441 will not apply.
2.	<p>The adjudicating officer-</p> <ul style="list-style-type: none"> • before adjudging penalty, shall issue a written notice in the specified manner¹, to the company, the officer in default or any other person, as the case may be, to show cause within a period of not less than 15 days and not more than 30 days from the date of service as to why the penalty should not be imposed on it or him <i>{Rule 3(2) of the Companies (Adjudication of Penalties) Rules, 2014}</i>. • shall indicate in the notice, the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default or any other person <i>{Rule 3(3) of the Companies (Adjudication of Penalties) Rules, 2014}</i> • shall draw attention in the notice about relevant penal provisions of the Act and the maximum penalty that can be imposed on the company and each of the officers in default or the other person <i>{Rule 3(3) of the Companies (Adjudication of Penalties) Rules, 2014}</i>.
3.	<p>Complete formalities regarding calling of board meeting in the following manner:</p> <ul style="list-style-type: none"> • Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting. • Send notice of board meeting to all the directors <ul style="list-style-type: none"> - at least 7 days before the date of board meeting or - in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1.
4.	<p>Convene board meeting to pass the following resolutions for:-</p> <ul style="list-style-type: none"> • taking note of the show cause notice issued by the adjudicating officer • considering the matter and reasons for contravening of the provisions of the section as alleged in the notice. • authorising a director/company secretary to complete the formalities for the same as to comply the alleged offense, if compliable • considering the reply of the notice and authorising a director to make reply of the notice and submit it with the adjudicating officer, after getting approval from the directors and requesting the adjudicating officer for extension of time for submission of reply of the notice, if needed.

1 Specified manner mean service of documents as specified under section 20 of the Act and rules made thereunder and details in respect of address (including electronic mail ID) provided in the KYC documents field in the registry shall be used for communication under this rule.

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"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 154 or any other number as may be prescribed under section 155 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 155 of the Act read with rule 153 of the Companies Incorporation Rules, 2014). • 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). • 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 companies provisions a government company and regulations in COA 2012 about COA 2012). • 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"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
1.	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).
2.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
3.	Forms in electronic in writing, on or before appointment, from the appointed director as Form 208-2 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 Appointment and Qualification of Directors) Rule, 2014.
4.	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

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