

FAILURE OF FILLING OF RESOLUTION WITH ROC



RESOLUTION REQUIRED TO BE FILED WITH ROC IN COMPANIES ACT

2013

GOYAL DIVESH & ASSOCIATES, Practicing Company Secretary
Series- 32

SERIES

NO- 32

ARE U MOVING TOWARD COMPOUNDING?

The Main Reason behind writing this article is “Are We Moving Toward Compounding?”

As per Section-117 of Companies Act, 2013:

Language of Section: Sub- Section 1 Section- 117:

A **Copy Of Every Resolution** or any agreement, in respect of matters specified in sub-section (3) **Sub- Section 3 Section-117: Every SPECIAL RESOLUTION** together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, **Shall Be Filed With The Registrar Within Thirty Days Of The Passing** or making thereof in such manner and with such **Fees As May Be Prescribed Within The Time Specified Under Section 403:**

As per Section 117(3) following Resolution required to file with ROC:

- a) Every Special Resolution is required to file with ROC in e-form MGT-14.
- b) Resolutions passed in pursuance of sub-section (3) of section 179;
- c) Resolution passed by a Company u/s 180(1) (c).
- a) Any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

AS PER MY KNOWLEDGE AND RESEARCH IN COMPANIES ACT, 2013 READ WITH RULES OF COMPANIES ACT, 2014 I HAVE PREPARED THE LIST OF RESOLUTIONS REQUIRED TO BE FILED IN MGT-14 WITH ROC WITHIN 30 DAYS OF PASSING OF RESOLUTION.

COMPLETE LIST IS GIVEN AT THE END OF THE ARTICLE

CONSEQUENCIES OF NOT FILING OF FORM MGT-14:

If the Company failed to file given resolutions in e-form MGT-14 within 30 days of Passing of Resolution. Then additional Fee will be applicable as table given below:
As per Section 403(1).

A. ADDITIONAL FEES:

Table of **Additional fees** which shall be applicable for delays in filing of the forms other than for increase in Nominal Share Capital

Period of Delays	Forms including charge documents
Up to 15 days (sections 93, 139 and 157)	One time
More than 15 days and upto 30 days (Sections 93, 139 and 157) and upto 30 days in remaining forms.	2 times of normal filing fees
More than 30 days and upto 60 days	4 times of normal filing fees
More than 60 days and upto 90 days	6 times of normal filing fees
More than 90 days and upto 180 days	10 times of normal filing fees
More than 180 days and upto 270 days	12 times of normal filing fees

Delay beyond 270 days, the second proviso of section 403(1) of the Act may be referred.

B. PENALTY:

IF COMPANY FAILS TO FILE E-FORM WITHIN 30 DAYS + ADDITIONAL 270 DAYS (TOTAL 300 DAYS) THEN PROVISIONS OF SECTION- 403(2) WILL APPLICABLE.

- (1) Any document, required is submitting, filing, registering or recording, or any fact or information required or authorized to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed:

VIEW POINT: As per Language of Section given above, if a company fails to file E-form within 300 days from the date of passing of resolution company have to pay to Fees 12times of Original fees Plus Compounding of Offence as per 403(2).

PENALTY WHICH DEPARTMENT CAN BE IMPOSED IS AS PER SECTION 403(2):-

Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

PENALTY PROVIDED UNDER THE ACT FOR SUCH DEFAULT IS GIVEN IN SECTION 117(2):-

The Company Shall Be Punishable With Fine Which **Shall Not Be Less Than Five Lakh Rupees but Which May Extend To Twenty Five Lakh Rupees**

AND (+)

Every Office Of the Company Who Is In Default, Including Liquidator Of The Company, If Any, Shall Be Punishable With Fine Which Shall Not Be Less Than One Rupees But Which May Extend To Five Lakh Rupees.

**BUT THERE IS A WAY TO GET SAVE COMPANY FROM PENALTY OF RS.
500,000/-**

460. CONDONATION OF DELAY IN CERTAIN CASES.

Notwithstanding anything contained in this Act,—

- (a) Where any application required to be made to the Central Government (MCA) under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and

- (b) Where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the

Hence if a Company has passed Special Resolution OR Board Resolution as per list given below but failed to file e-form MGT-14 in this respect beyond 300 days, it needs to file application for condonation of delay with Central Government (MCA), so that the **FORMS- CG-1** can be filed with Central Government.

Question: 1:- If A **ANY** Limited Company passed any resolution u/s 117 and 179(3) of Companies Act, 2013 (List of Resolutions given at the end), Company was not aware about provisions and fails to file e-form MGT-14 along with Special Resolution.

Then what will be the treatment?

Solution: : As per Section -117 if Company pass resolution u/s 117(1) on or after 1st April, 2014 there is need file MGT-14 by company for filling of Such Resolution. Today 14th February, 2015 Company come to know that there was needed to file same with ROC.

1. If the delay is less than 300 days, for E.g. the Company is filling MGT-14 before 26th January, 2015 then additional fees of 12 times of the normal fees need to be paid for the purpose of filling of MGT-14.
2. If the Company failed to file form beyond 26th January, 2015 then the Company has to apply for condonation of delay u/s 460 and the Condonation fees and additional fees needs to be paid with the e-form MGT-14.

HENCE IT IS RECOMMENDED THAT THAT THE COMPANY SHOULD MAINTAIN CALENDER OF ALL THE RESOLUTIONS PASSED U/S 117 & 179(3) SO THAT THE DELAY SHOULD BE NEVE BE EXCEEDING 300 DAYS.

THERE ARE APPROX MORE THAN 50 NATURE OF TRANSACTIONS WHICH ARE COVERED U/S 117 AND 179(3) AS PER LIST GIVEN BELOW.

CONCLUSION: So As per Above Discussion it is clear that if company are ignoring or not aware from filling of resolution by Company then WE ARE MOVING TOWARD CONDONATION/ COMPOUNDING.

PROCESS FOR FILLING OF FORM IN CASE OF EXPIRY OF 300 DAYS OF PASSING OF RESOLUTION:

As per above discussion if company fails to file e-form MGT- 14 within 300 days from the date of passing of Resolution then below given will be process to file form with ROC.

STEP- I

- Hold a Board Meeting:
Authorize any director or secretary of Company to make application with Central Government u/s 460 for condone the delay of filling of resolution.
- Prepare the Application:
Company will prepare an Application in the favour of Central Government. Company will mention the facts of the resolution and reason for not filling the resolution within time with the ROC. (Get the application signed by any director of company; it's advisable to get it signed by two directors).
- File Form CG-1: Process to fill Form
 - Purpose of application
 - Detail of application
 - Attach- Application
 - Digitally signed by director.
 - Minimum filling fees for Small Company or OPC – Rs. 1.000/-
 - Minimum filling fees for Other Companies – Rs. 2,000/-
- Process of Form by CLB:
The power to condone the delay is of Central Government (CLB). CLB will impose the penalty as per reason of delay.

FORM MGT-14 REQUIRES FILING FOR FOLLOWING BELOW MENTION RESOLUTIONS:

GOYAL DIVESH & ASSOCIATES

1. **Section- 8:** For a company registered under Section- 8 to convert itself into a company of any other kind or alteration of its Memorandum or Articles
- 2.
3. **Section – 12:** Shifting Of Registered Office.
4. **Section-13:** Alteration in MOA.
5. **Section- 14:** Alteration in Article.
6. **Section 13(8):** A company, which has raised money from public through Prospectus and still has any unutilized amount out of the money so raised, shall not Change its objects for which it raised the money through prospectus unless a special Resolution is passed by the company.
7. **Section 27(1):** A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution.
8. **Section 41A:** A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed. (Section still not applicable).
9. **Section 48(1):** Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class.
10. **Section 54:** Issue of Sweat Equity Shares.
11. **Section 62(1) (c):** Preferential allotment of shares.
12. **Section 65:** Conversion of Unlimited company into limited company.
13. **Section 66(1):** Reduction of Share Capital.

14. **Section 67(3) (b):** Special resolution for approving scheme for the purchase of fully-paid shares for the benefit of employees.
15. **Section 68(2)(b):** Buy Back of Shares.
16. **Section 71(1):** A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption: **Provided that** the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.
17. **Section 76:** Inviting deposits from person other than members.
18. **Section-94:** Keep registers at any other place in India.
19. **Section 140(1):** The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, May appoint more than 15 directors by passing of Special resolution.
20. **Section- 149(10):** Re-appointment of Independent Director.
21. **Section 165(2):** Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.
22. **Section- 180:** The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely-
- a. to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
 - b. to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation.
 - c. to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business.
 - d. to remit, or give time for the repayment of, any debt due from a director.
23. **Section- 185:** For approving scheme for giving of loan to MD or WTD.
Contact On csdiveshgoyal@gmail.com For Any Query Or Question Or Suggestions

24. **Section- 188:** To enter into related party transaction with the company if paid up capital of company exceed Rs.10/- Crore.
25. **Section- 186(3):** Loan& Investment by company exceeding 60% of paid up share capital or 100% of free reserve.
26. **Section- 196:** Appointment of a person as Managerial Personnel if, the age of Person is exceeding 70 year.
27. **Schedule V:** Remuneration to Managerial personnel if, profits of company are Inadequate.
28. **Section 248:** Power of registrar for removal name of company.
29. **Section 271(1)(b):** Special Resolution for winding up of the company by Tribunal.
30. **Section 304(b):** Special Resolution for winding up of company

AS PER SECTION 179(3): The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—these resolutions are also necessary to file in MGT-14.

31. To make calls on shareholders in respect of money unpaid on their shares.
32. To authorize buy-back of securities under section 68.
33. To issue securities, including debentures, whether in or outside India;
34. To borrow monies;
35. To invest the funds of the company;
36. To grant loans or give guarantee or provide security in respect of loans;
37. To approve financial statement and the Board's report;
38. To diversify the business of the company;
39. To approve amalgamation, merger or reconstruction;
40. Take over a company or acquire a controlling or substantial stake in another company;
41. Any other matter which may be prescribed.

In addition to the things mention above the following things are shall also require to file with ROC in MGT-14 per **Rule 8 of Companies (Meetings of Board and its Powers), Rules 2014-**

42. To make political contributions.
43. To appoint or remove key managerial personnel (KMP)
44. To take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
45. To appoint internal auditors and secretarial auditor;
46. To take note of the disclosure of director's interest and shareholding;
47. To buy, sell investments held by the company (other than trade investments), constituting 5% or more of the paid up share capital and free reserves of the investee company;
48. To invite or accept or renew public deposits and related matters;
49. To review or change the terms and conditions of public deposit;
50. To approve quarterly, half yearly and annual financial statements or financial results as the case may be.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com) Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Though utmost efforts has made to provide authentic information, it is suggested that to have better understanding kindly cross-check the relevant sections, rules under the Companies Act, 2013. The observations of the

CS Divesh Goyal
GOYAL DIVESH & ASSOCIATE
Mob: +91-8130757966
csdiveshgoyal@gmail.com