

PROCESS FOR SURRENDER OF DIN

GOYAL DIVESH & ASSOCIATES,
Practicing Company Secretary

COMPANIES ACT- 1956

As per Section 266A of Companies Act, 1956:

Every individual intending to be appointed as director of Company should obtain Director Identification Number (DIN).

As per Section 266C of Companies Act, 1956:

No individual, who had already been allotted a Director Identification Number under Section 266B, shall apply, obtain or process another Director Identification Number.

As per Section 266G of Companies Act, 1956:

If any individual or director, referred to in section 266A or section 266C, contravenes any of the provisions of those sections, every such individual or director or the company, as the case may be, who or which, is in default, shall be punishable with

- Fine which may extend to Rs. 5000/- (five thousand rupees only) and
- where the contravention is a continuing one, with a further fine which may extend to Rs. 500/- (five hundred rupees) for every day after the first during which the contravention continues.

COMPANIES ACT- 2013

As per Section 153 of Companies Act, 2013:

Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

As per Section 159 of Companies Act, 2013:

If any individual or director of a company, contravenes any of the provisions of Section 153, such individual or director of the company shall be punishable with

- imprisonment for a term which may extend to Six months or
- with fine which may extend to Rs. 50,000/- and
- Where the contravention is a continuing one, with a further fine which may extend to Rs. 500/- for every day after the first during which the contravention continues.

IMPORTANT: WHETHER OCCUPYING TWO DIN- HOW TO TACKLE?

This article is especially for the person who has obtained more than 1 (One) DIN at any time. We came to know that Regional Director (Noida) has issued "Show Cause Notice U/s 266G of the Companies Act, 1956" to more than 2 Lac Persons. (Copy of SHOW CAUSE Notice attached).

If any person not received "Show Cause Notice" and having two DIN, we will advise that person to surrender One DIN and file petition with CLB for Compounding of Offence.

*** One should preferably cross check from the MCA website that whether he is occupying more than one DIN as per process given below:*

STEPS:

- Go to MCA website Link: <http://www.mca.gov.in/>
- Log in by your user ID on MCA website.
- Click on "Companies/LLPs in which a person is/was a director/Designated Partner"
- Click on Search Button in front of DIN/DPIN
- Mention the Name, Father Name and Date of Birth and search.
- MCA will appear the No. DIN allotted to you.

If one finds more than one DIN. He should immediately take steps to surrender the duplicate DIN, preferably which are not in use as per process given below:

(**Practical Example**: One of my clients received show cause notice from the Ministry for surrender of duplicate DIN. While I was preparing the surrender application and searching on MCA, I came to know that person has **THREE DIN**. Therefore it is advisable one should even check from the MCA website whether he is occupying more than, even he not received any notice)

PROCESS FOR SURRENDER/CANCELLATION/ OF DUPLICATE DIN:

Section 153 read with rule 11 of The Companies (Appointment and qualification of Directors)

- (a) Holder of duplicate DIN shall make an application for surrender with Regional Director, Noida.
- (b) The application shall be made in form DIR-5.
- (c) The application shall be accompanied with a declaration on affidavit duly notarized that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority.
- (d) The form DIR-5 is physical form so form DIR-5 will be attach in form RD-1 and filed with Regional Director.

Attachments of RD-1:

- ❖ DIR-5
- ❖ Self attested copy of PAN Card
- ❖ Self attested copy of Passport
- ❖ Affidavit of surrender of DIN (Draft Attached)
- ❖ Board Resolution, if any (Draft Attached)
- (e) The Central Government will check E-records.

INFORMATION REQUIRED BEING MENTION IN DIR-5:

- i. Name & Din of applicant
- ii. Reason for surrender of DIN
- iii. PAN
- iv. Passport No, if any.
- v. Permanent resident address.
- vi. Phone No & Email ID
- vii. DSC of Person himself

INFORMATION REQUIRED BEING MENTION IN RD-1:

- i. Mention CIN of Company in which you are director from original DIN.
- ii. Purpose- Other
- iii. Purpose- Surrender of DIN

- iv. Detail of application
- v. DSC of person himself/ any director of Company.

NOTE:

- The e-Form will be processed by the office of Regional Director (Non STP).
- Fee as per Annexure A of RD-1 instruction kit.
- A company can seek approval from Regional Director by filing application in e- Form RD-1 for certain mentioned purposes under Companies Act, 2013.
- Corresponding form 24A as per Companies Act, 1956.
- Please note that giving false statement or evidence is punishable under section 448 and 449

After surrender of DIN one should also apply to Company Law Board (CLB) u/s 621A of Companies Act, 1956 for Compounding of Contravention of Section 266G of Companies Act, 1956)

Corresponding section of 621A is Section 441. Section 441 is still not applicable so application will be file as per Section 621A of Companies Act, 1956.

Which authority has Power to compound the offence?

- The offence can be compounded by the Regional Director (RD) where the maximum amount of fine is upto Rs.50,000/-
- By the Company Law Board (CLB) where the maximum amount of fine exceeds Rs.50,000/-.

PROCESS FOR COMPOUNDING OF OFFENCE (TWO DIN):

Provisions and procedure for Compounding of offences, which are punishable under Companies Act, 1956 are stipulated under section 621A of the act.

MEANING OF WORD COMPOUNDING:

The meaning of word compounding of offence is not defined under Companies Act, 1956. However if we try to analyze the section 621A.

we can draw one clear interpretation i.e. "It's nothing but admission of guilt" In the process of compounding, the person may either Suo Moto or on receipt of notice of default/initiation of prosecution, admits the commission of default and make an application for compounding of the concern offence.

The defaulters agree to pay penalty which may be ordered by the Central Government. We will try to analyze the provisions and procedure of compounding.

E- Form turning to the procedural part, we must understand the basic provisions relating to compounding and authorities to be approached for compounding of offence.

Accordingly following are the important provisions pertaining to Compounding of Offences.

APPLICABILITY: -

Only those offences which are punishable with either Penalty or Imprisonment i.e. where it is at discretion of the court to impose penalty or imprisonment, are compoundable under section 621A.

In other words offence which is specifically punishable with imprisonment only or imprisonment plus fine is non-compoundable.

PENALTY: -

Penalty, which may be imposed under the order of compounding by the CLB or RD shall not exceed the maximum amount of fine which may be imposed for commission of that offence. Means if the maximum fine for an offence is 10 times of basic fees, then the penalty shall not exceed the 10 times of basic fees.

The fine imposed under the order of Compounding is considered as additional fees and payable under section 611 (2) and not regarded as penalty. This has a significant implication for qualifications and disqualifications of Directorship.

EFFECTS OF COMPOUNDING:

- Once the offence is compounded, no further prosecution shall be initiated either by registrar or shareholder or any other person in respect of that offence
- Once the offence is compounded, the intimation of compounding needs to be given to the Registrar within period of seven days from the day on which the offence is so compounded.

PROCESS FOR COMPOUNDING:

A. PREPARATION OF APPLICATION:

A petition is required to be prepared in form no. 1 of Companies (court) Rules, 1959 (Attached). Following documents are required to be attached with petition;

- Board resolution authorizing director for filing petition.
- Affidavits duly notarized.
- Power of attorney / Memorandum of Appearance
- Sometimes Copies of 3 years attested financial statements
- Copy of agreement (if any)

B. COPY OF APPLICATION:

The complete set for petition is to be prepared in Duplicate:

- One for presenting in Company Law Board/Regional Director
- One as an acknowledgment

PROCESS OF PREPARATION OF APPLICATION GIVEN BELOW

C. FILLING OF FORM WITH ROC:

E-form No. **GNL-1** is required to be filed with Registrar of Companies:

Attachments of GNL-1:

- Detailed application is required to be attached in all the cases of filing.
- Affidavit duly notarized.
- Power of Attorney/ Memorandum of Appearance
- Copy of notice received from Roc or any other competent authority

D. FILING OF PHYSICAL APPLICATION:

After that physical application can be made to the CLB or RD as the case may be for compounding of offence.

E. ORDER OF COMPOUNDING:

Once the order of Compounding is passed, the same needs to be filed with the registrar of companies in e-form INC-28.

PROCESS FOR PREPARATION OF APPLICATION REQUIRED TO BE FILED WITH CLB:

- ❖ Application will be prepared in form no. 1 of Companies (court) Rules, 1959.
- ❖ Details required to be mention in the Application:
 - Name of Company
 - Registered office address of Company

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- Structure of Capital of Company
- Main Objects of Company
- Particular of Petitioner
- Jurisdiction
- Fact of the Case
- Relief Sought
- ❖ Power of attorney in favour of professional.
- ❖ Memorandum of understanding in form No. 5
- ❖ Affidavit Verifying the Petition

(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 author are personal view and the authors do not take responsibility of the same and this cannot be quoted before any authority without the written