

Consequences of Non - compliances by Private Limited Company

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In brief

There are many business models such as proprietorship or LLP or Company, the decision depends on many economic and legal factors. Among all others, Private Limited Company is the most popular form of business, but there are various compliances which are required to be followed, once your company is incorporated like reporting of financial results, changes in management, meeting of board and shareholders, auditing of accounts etc.

Relevant provisions

The Companies Act, 2013 and rules framed thereof.

In detail

The Companies Act, 2013 has laid down certain rules and regulations which all companies irrespective of size have to abide, right from the initial stage of incorporation to the final stage of dissolution. All the compliances provided under the company law can be divided in 2 parts, **Mandatory compliances** and **Event-based compliances**.

Let us see the consequences of non-filing of mandatory forms by private limited company:

1. Non-filing of Annual Return

Due Date: Every Company shall file Annual Return in Form MGT-7 within 60 days from the date of AGM.

Penalty: If any company fails to file its annual return before the expiry of the period such company and its every officer who is in default shall be liable to a penalty up to **Rs. 50,000** and in case of continuous failure, with further penalty of Rs. 100 for each day during which such failure continues, subject to a maximum penalty of Rs. 5,00,000.

2. Non-filing of Financial Statements

Due Date: Every Company shall file Annual Financial Statements in Form AOC-4 and AOC – 4 CFS, if any within 30 days from the date of AGM.

Penalty: As per 137(3), If a company fails to file Form AOC-4 before the due date, the company shall be liable for a penalty of **Rs. 1,000** for every day during which the failure continues but maximum penalty of Rs. 10,00,000.

MD and CFO of the company, if any, and, in the absence of the MD and CFO any other director who is charged by the Board with the responsibility, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty up to Rs. 1,00,000 and in case of continuous failure, with further penalty of Rs. 100 for each day after the first during which such failure continues, subject to maximum penalty of Rs. 5,00,000.

3. Non-compliance of filing Resolutions and Agreements

Due Date: A copy of every

resolution or any agreement required to be filed under 117(3), together with the explanatory statement, shall be filed with the Registrar in Form No. MGT-14 within 30 days.

Penalty: If any company fails to file the resolution or the agreement then, such company shall be liable to a penalty up to **Rs. 100,000** and in case of continuing failure, with further penalty of Rs. 500 for each day, during which such failure continues, subject to a maximum of Rs. 25,00,000 and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of Rs. 50,000 and in case of continuous failure, with further penalty of Rs. 500 for each day after the first during which such failure continues, subject to maximum penalty of Rs. 500,000.

4. Non-compliance for holding Annual General Meeting (AGM)

Due Date: Every company other than a One-Person Company shall hold its Annual General Meeting within 6 months from

the end of financial year (i.e. 30th September of the next year) and the maximum gap between two meetings shall be 15 months.

Penalty: If any default is made in holding a meeting of the company in accordance with section 96, 97 or 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to **Rs. 1,00,000** and in the case of a continuing default, with a further fine which may extend to Rs. 5,000 for every day during which such default continues.

5. Non-compliance of Disclosure of Interest by Directors

Due Date: Every director shall disclose his interest at the 1st meeting of the Board in which he participates or 1st meeting of FY or whenever there is any change in the disclosures already made, then at the 1st Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding in Form MBP-1 and shall not participate in meeting unless interest disclosed.

Penalty: If a director of the Company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to 1 year or with fine which may extend to **Rs. 1,00,000** or with both.

6. DIR-3 KYC

Due Date: Every individual who holds a DIN as on 31st March of

a financial year as per these rules shall, submit e-form DIR-3-KYC on or before 30th, September of immediate next financial year.

Where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, needs to submit web-form DIR-3 KYC-WEB.

Penalty: All cases of DIR-3 KYC filed from 6th October 2018 onwards will attract a fee of **Rs. 5000**.

7. Non-compliance of ACTIVE (Active Company Tagging Identities and Verification)

Due Date: Every company incorporated on or before the 31st December, 2017 shall file the particulars of the company and its registered office in E-Form INC-22A on or before 25.04.2019.

Penalty: If any company fails to comply Straightaway fee of **Rs. 10,000** is payable.

8. Half yearly return in respect of outstanding payments to Micro or Small (MSME) Enterprise

Due Date: Form MSME-I (half-yearly return) has to be filed within 30 days from the end of each half-year in respect of outstanding payments to Micro or Small Enterprise i.e. 30th April 2020 (for October 2019 to March 2020) 31st October 2020 (April 2020 to September 2020).

Penalty: If any company fails to comply with an order or knowingly furnishes any information or statistics which is incorrect or incomplete, the company shall be punishable with fine which may extend to **Rs. 25,000** and every officer of the company who is in default, shall be punishable with imprisonment for a term which

may extend to six months or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 3,00,000, or with both.

9. Non-compliance for filing Return of Unsecured Loan and Deposits

Due Date: The return in Form DPT-3 is mandatory for all companies irrespective of size and category. E-Form DPT-3 shall provide all the particulars regarding all outstanding loans which are not considered as deposits as per the act and every outstand receipt of money. The due date for one-time return was 22nd April, 2019. Further, the yearly return of deposits has to be filed by 30th June Every Year.

Penalty: If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to **Rs. 5,000** and where the contravention is a continuing one, with a further fine which may extend to Rs. 500 for every day after the first day during which the contravention continues.

10. Maintenance of Registers

Every Company is required to maintain certain registers which includes Registers of members, Register of Charges, Register of transfer of shares, Register of Debenture holders, Register of Director and KMP etc.

Penalty: Penalty is minimum **Rs. 50,000** to Maximum Rs. 3,00,000 along with Rs. 1,000 per day, if default continues. However, the penalty may vary depending upon the nature of default.

Conclusion

The above-mentioned penalties are just a gist of non-compliances of few mandatory Forms. However, event-based forms and compliances are not covered.

Recently, Government has strike off around 2.5 Lakh companies and disqualified more than 3 Lakh directors for non-compliance of various provisions of Companies Act, 2013.

Hence, it can be clearly understood that running a business specially in the form of a Private Limited Company should be handled responsibly and it requires both an ongoing investment of time and effort, and significant knowledge of financial and regulatory technicalities. Compliance is a business asset. If it is used correctly, it can bring competitive advantage,

customer trust and ultimately return on investment.

Hence, it becomes crucial to ensure compliance and take help of a Professional and also understand legal requirements for fulfilling compliances without any penalty.

Because... as rightly quoted, **“Cost of non-compliance is always more than cost of compliance”**.



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