

COMPANIES ACT 2013 - SECTION 403 - DISQUALIFICATION OF DIRECTORS - DORMANT COMPANIES

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Purpose


Review of section 403 –


-  Necessary to ensure that companies file all documents in the registry within time;
-  Delayed filing allowed but with additional fees/higher additional fees;
-  The additional fee shall be determined considering the nature of document, the size of the company concerned and without any bar from prosecutions for the delayed filing;
-  Company shall be subject to punishment/penal action in order to deter non-compliance;




Section 403: Before the Companies Amendment Act


 Immunity given to companies to file returns within 270 days of the delay in certain cases;


 post 270 days, the company is liable for higher additional fees and prosecution/penal action;

 In case of condonation of delay, online facility (e-forms) not available.

Section 403: Post the Companies Amendment Act

 Immunity of 270 days has been done away with i.e. company shall be immediately liable for punishment/penal action;

 Payment of additional fees to not relieve the company from its liabilities;

 For delay in filing of Annual Return (S.92) and Financial Statements (S.137), penalty of Rs.100/- per w.e.f. July 1, 2018

 E-forms : CG-1 introduced

Amendment -Section 403- Companies (Amendment) Act, 2017

Proviso to sub- section (1) of Section 403:



First Proviso (Notified): For delay in filing of Annual Return (S.92) and Financial Statements (S.137): Specific additional fees of not less than Rs.100/- per day in addition to other legal action or liability;




Second Proviso (Not Notified): For delay in filing of returns in any other case: Additional Fees as prescribed in Companies (Registration Offices and Fees) Rules, 2014 and Companies (Registration Offices and Fees) Second Amendment Rules, 2018;



Third Proviso (Not Notified): Default on two or more occasions in submitting documents to attract higher additional fee as may be prescribed.




Amendment - Section 403 - Companies Act 2013

Sub-section (2) of Section 403 (Notified):


 Default by company to file returns before the expiry of the period as specified in the relevant sections: the company and the **officers of the company** shall immediately be liable for additional fees as well as the penalty or punishment provided under this Act for such failure or default.




Section 403 – Amendment

-  Two parts - Annual Forms - Forms other than Annual filing forms.
-  Immunity provided to companies to file within additional 270 days has been done away with. Therefore, any filing beyond timeline specified in the respective section will invite additional fees as well as the condonation of delay (Proviso 1&2).
-  The default on two or more occasions in submitting, filing, registering or recording of the document, fact or information will attract higher penalty the minimum being twice the additional fee provided in the Act(Proviso 3).

Additional Liability

 Prescribed fee or/ and additional fee, as the case may be, shall be levied without prejudice to penalty & punishment contained in the relevant section.

 where the relevant section does not contains the provision with respect to filing of the respective Form with additional fee then, in those cases, once the time line prescribed in the respective section is expired, it will amount to violation, which is liable to condone under section 460 of the Companies Act, 2013 and shall also attract the penalty mentioned under respective Section.



Condonation of Delay

Immunity of 270 days has been done away with -

Condonation of Delay applicable (Section 460): E-form CG-1

has to be filed along with:





-  Documents for which the company is making application for condonation of delay;
-  Certified true copy of the Board Resolution authorizing for filing the application and appointing authorized representative, if any;
-  Application with reasons for delay and relief sought;
-  Other documents/ clarifications, if any.



Table of additional fee applicable for delay in filing of forms other than for increase in Nominal Share capital or forms under Section 92/ 137 of the Act

<i>Sr. No</i>	<i>Period of delays</i>	<i>Forms including charge documents</i>
01	up to 15 days (Section 139 and 157)	One time
02	More than 15 days and up to 30 days (Section 139 and 157) and up to 30 days in remaining forms.	2 times of normal filing fees
03	More than 30 days and up to 60 days	4 times of normal filing fees
04	More than 60 days and up to 90 days	6 times of normal filing fees
05	More than 90 days and up to 180 days	10 times of normal filing fees
06	Beyond 180 days	12 times of normal filing fee

For Forms under section 92 or 137:- (i) In case the period within which a document required to be submitted under section 92 or 137 of the Act expires after 30/06/2018, the additional fee mentioned in Table shall be payable :-




Sr. No.	Period of Delay	Additional Fee Payable
01.	Delay beyond period provided under Section 92(4) of the Act	One Hundred per day
02.	Delay beyond period provided under Section 137 (1) of the Act	One Hundred per day

In all other cases where the belated annual returns or balance sheet/financial statement which were due to be filed whether in the companies Act, 1956 or the companies Act, 2013 the following additional fee mentioned in Table shall be payable:-

Sr. No.	Period of Delay	Additional Fee payable (in Rs.) up to 30/06/2018
01.	upto 30 days	2 times of normal filing fees
02.	More than 30 days and upto 60 days	4 times of normal filing fees
03.	More than 60 days and upto 90 days	6 times of normal filing fees
04.	More than 90 days and upto 180 days	10 times of normal filing fees
05.	Beyond 180 days	12 times of normal filing fees

Plus
Rs. 100 per
day with
effect from
01/07/2018

Disqualification of Directors

-  Section 164-not filing of **financial statements or annual returns** for any continuous period of **three financial years**;
-  Failure to **repay** the **deposits** accepted by it or pay interest thereon or to **redeem** any **debentures** on the due date or pay interest due thereon or **pay** any **dividend** declared and such failure to pay or redeem continues for **one year** or more,
-  shall be eligible to be **re-appointed** as a director of that company or appointed in other company for a period of **five years** from the date on which the said company fails to do so.



Issues around Disqualification

When does Vacation take effect:






Annual filings by companies - connected with date of holding of the AGM - presumption will have to relate to the last date on which AGM could have been held.



MCA- Immediate Vacation.



Retrospective effect?

-  Notified on April 1, 2014.
-  Disqualifications have been effected from 1 November 2016 -1 November 2015.
-  Law affecting substantive rights of parties is presumably prospective in applicability.



Compliances




Inform the Registrar in Form DIR-9 within a period of **30 days** of the failure that would attract the disqualification under **Section 164(2)**, furnishing therein the names and addresses of all the directors of the company.




As per **Rule 14 (5) of the Companies (Appointment and Qualification of Directors) Rules, 2014**, the director shall make an application in form DIR – 10 to the RoC for removal of disqualification and the said application can be made only at the end of the tenure of **5 years** post his disqualification.

Companies (Amendment) Act, 2017

 Director not to incur disqualification for a period of six months.

 If the existing director of such a company in default incurs disqualification, the office of such director would become vacant in all other companies, except the company which is in default, to ensure that the defaulting company has the requisite number of directors to remedy the default.

 Disqualification to continue even if an appeal/petition has been filed against the order/conviction



MCA - Condonation of Delay Scheme, 2018

 Applicable to all defaulting Companies apart from those stuck off under section 248 (5).

 Temporary activation of DINs.


 Filing of documents-Additional Fee

 Form e-CODS.



Dormant Companies

 Company which has not filed financial statements or annual returns for **two financial years** consecutively

 Registrar shall issue a **notice** to that company and enter the name of such company in the register maintained for dormant companies.

 Section 248- Power of Registrar to **strike off** the Companies.

 Impact on business? **Non- operation of Bank Accounts.**

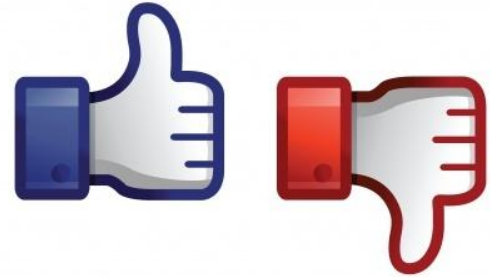


Do's and Don'ts

 Ensure timely Filing/Submission/Reporting's.

 Mechanisms to comply with Section 92 and 137.

 Awareness of fees and late fees.



Thank you 😊

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