

# Article

## Non- Bailable Offences under Companies Act,2013



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## Non- Bailable Offences under Companies Act, 2013

The Companies Act, 2013 (Act) has brought in extensive changes with the objective to ensure and seek transparency and establish better corporate governance practices. In view of the same, concerted efforts have been taken to bring in stern provisions relating to non-compliances of the Act and substantially enhancing the punishments prescribed for them.

The Act has gone a step further to treat certain offences at par with criminal ones, thereby identifying them as cognizable and non-bailable. It thus becomes imperative on part of promoters, directors, officers or any other person of the company to know what offences are classified as non -bailable mean, what does non bailable mean and what are the rights under such circumstances.

This article is an effort to provide an insight on concept of offence and bail, constituents of bailable and non-bailable offences, rights of persons arrested and finally on the non-bailable offences that fall under the Act.

### Concept of Offence and Bail

An offence denotes "*crime*" or "*wrongdoing*". The word "*crime*" is derived from Latin word "*crimen*" meaning, "*charge*" or "*cry of distress*". In simple terms, it means a public wrong, an act harmful not only to an individual, but also to people at large.

Section 2(n)<sup>1</sup> of the Criminal Procedure Code (**Code**) defines offence as "*any act or omission made punishable by any law for the time being in force*". Section 40 of Indian Penal Code (**IPC**) defines offence "to denote a thing made punishable under the Code".

On perusal of the above definitions, we see that an act becomes an offence only when specifically made punishable by any law. An act, which has not been made punishable expressly under any law, is not an offence.

### Bail

This term has not been defined in the Code. Section 205<sup>2</sup> of IPC defines bail as temporary release from imprisonment on furnishing security/surety to appear for trial. To put it in simple terms we can say that it means release of an accused/offender from legal custody upon their giving sufficient security for his appearance later. Law recognizes that individual freedom should be safeguarded and that every person including the accused is entitled to freedom unless found guilty.

### Bailable and Non-bailable Offences

The Code does not provide any specific criteria to determine whether a particular offence is bailable or non-bailable. It is only the First Schedule of the Code that illustrates whether an offence falls under the bailable or non-bailable category. However, generally speaking, it can be stated that by and large serious offences are considered as non-bailable and others as bailable.

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<sup>1</sup> Code of Criminal Procedure, 1973; Criminal Procedure- C.K. Takwani

<sup>2</sup> Indian Penal Code, 1880



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As per section 2(a) of Code a "bailable offence"<sup>3</sup> is an offence (i) which is shown as bailable in the First Schedule of the Code, or (ii) which is made bailable by any other law for the time being in force. These primarily constitute less serious offences, where bail can be claimed as matter of right and is granted by police officer in due course. Any other offence apart from those mentioned as bailable is "non-bailable".

On perusal of the First Schedule of the Code, offences that are punishable with imprisonment of less than 3(three) years are usually considered as bailable and offences that are punishable with imprisonment for 3 (three) years or more are usually considered as non-bailable.

Under non-bailable offences, bail cannot be claimed as a matter of right. This, however, does not mean that there can be no bail for such offences. It simply means that grant of bail for such offences are purely at the discretion of the court. The court after recording reasons, may release an accused on bail. However, persons accused of offences punishable with death, life imprisonment or imprisonment for 7 years or more can be released on bail, only after giving an opportunity of hearing to the public prosecutor.

### Know your Rights When Under Arrest

The Code provides and confers certain specific rights to persons who are arrested (i) right to know grounds of arrest (as guaranteed by Article 22 of Constitution of India) (ii) right of bail (iii) right to be produced before magistrate or court (iv) right to inform relative/ friend (v) right to consult lawyer (vi) right to be examined by doctor.

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Section 212(6) of the Act now recognizes offences as mentioned in the *Annexure* to be cognizable<sup>4</sup> (offence where a police officer may arrest without a warrant) and non-bailable.

This means that a bail for such offences can be granted only (i) after the public prosecutor has been given an opportunity to oppose the same; and (ii) the court has sufficient reason to believe that the person is not guilty of offence and shall not likely commit any offence when on bail.

This section, however, is not applicable to (i) a person under the age of 16 years ;or (ii) a woman ;or (iii) sick; or (iv) infirm person, who otherwise may be released on bail subject to discretion of the court.

Imposing such a condition on bail, technically equates these offences with offences that are punishable with death, life imprisonment or imprisonment for 7 years or more, where bail may be granted subject to hearing of the public prosecutor and court'.

The very intention to recognize offences under section 212 (6) as a "criminal" is to acknowledge it as a public wrong and prevent and control further occurrences of the same. Recognizing such offences as non-bailable would not only deter the offender from

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<sup>3</sup> <https://sites.google.com/site/evakilcocc/bailable-and-non-bailable-offences>

<sup>4</sup> S.2 (c) of Code of Criminal Procedure, 1973



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committing further offence but also deter others from committing similar offences thereby upholding the very objective and intrinsic principle of criminal justice.

The rights as stated under “Know your Rights under Arrest” are always available to the persons arrested for offences under the Act.

### **The Road Ahead**

As now that we know that an act, which results in, a public wrong and which is made punishable specifically by any law, constitutes an offence. Offences are generally classified as bailable and non-bailable and have been enumerated in the First Schedule of the Code. Non- bailable offences primarily constitute offences that are more serious in nature and bail for such offences are subject to the discretion of the court.

The Act, in wake up of various reported frauds and fraudulent activities on part of the officers in charge of the company, has substantially enhanced the severity of punishment for such offences. It has made efforts to recognize them as criminal and non-bailable with an objective to prevent and control such offences, safeguard the interests of the shareholders and also to serve as deterrent for those pronounced guilty.

However, the effectiveness of such stringent machinery can be only be ascertained in due course of time. Time alone shall judge whether such severity was able to satisfy and make substantial difference in upholding the principles of justice, equity and fairness.

## Annexure- Non-bailable Offences under the Act

<b>Section</b>	<b>Offence</b>	<b>Person liable</b>
<b>7(5)</b>	Furnishing any false or incorrect particulars of any information or suppressing any material information, with the Registrar in relation to the registration of a company	A person furnishing such information
<b>7(6)</b>	Furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made during incorporation of company, or by any fraudulent action	Promoters, first directors of the company and/or an advocate, a chartered accountant, cost accountant or company secretary in practice, engaged in the formation of the company and a person named in the articles as a director, manager or secretary of the company.
<b>34</b>	Untrue or misleading statements stated in prospectus or where any inclusion or omission of any matter is likely to mislead	Every person who authorizes the issue of such prospectus
<b>36</b>	Knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into any agreement (i) with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or (ii) the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or (iii) with a view to obtain credit facilities from any bank or financial institution	Any person making such promise
<b>38(1)</b>	Abetments (i) of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or (ii) of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or (iii) inducing directly or indirectly a company to allot, or register any transfer of, securities	Any person making such abetments



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	to him, or to any other person in a fictitious name	
<b>46(5)</b>	Issue of duplicate share certificates with the intention to defraud	Company and every defaulting officer of the company
<b>56(7)</b>	Transfer of shares with an intention to defraud	Depository or depository participant
<b>66(10)</b>	Knowingly (i) conceals the name of any creditor entitled to object to the reduction;(ii) misrepresents the nature or amount of the debt or claim of any creditor; (iii) abets or is privy to any such concealment or misrepresentation	A person who knowingly commits the same
<b>140(5)</b>	Auditor against whom order passed by Tribunal confirms acting in a fraudulent manner or abetting or colluding in any fraud by, or in relation to the company	Auditor of the company
<b>206(4)</b>	Business of a company being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of the Act or if the grievances of investors are not being addressed	Every officer of the company in default
<b>213</b>	(i) The business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud	Every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs
<b>229</b>	Any (i) destruction, mutilation or falsification, or concealment or tampering or unauthorized removal of documents relating to the property, assets or affairs of the company or the body corporate, (ii) false entry in any document concerning the company or body corporate; or (iii) explanation which is false or which is known to be false; during the course of any inspection, inquiry or investigation	Any person or an officer or other employee of a company or other body corporate required to make statement under investigation
<b>251(1)</b>	Application by a company under section 248 (2) with an intention of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other person	Persons in charge of the management of the company



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<b>339(5)</b>	During winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose	Any person, who is or has been a director, manager, or officer of the company or any person who knowingly was party to the carrying on of the business in a fraudulent manner
<b>448</b>	Any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder (i) which is false in any material particulars, knowing it to be false; or (ii) which omits any material fact, knowing it to be material	Any person making/providing such statement.