



COMPANIES FRESH START SCHEME, 2020

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What is CFSS-2020 ?

In the past few days, the flurry of announcements made by the Ministry of Corporate Affairs has proven to be in the advantage of the Corporates. Be it, LLP settlement Scheme or qualifying the contribution to PM CARE fund as CSR activity or special measures under the Companies Act, 2013 in view of the COVID-19 outbreak.

The Government of India has come forward to facilitate Companies to set right certain filing related defaults, irrespective of duration of default and make a fresh start as a fully compliant entity. The Ministry of Corporate Affairs (MCA) has termed these measures as “alleviative”. As per the MCA this is an onetime opportunity for the Companies to make a fresh start on a clean slate. This note deals with the brief provisions of Companies Fresh Start Scheme, 2020 (CFSS-2020) introduced by MCA .

Provisions of the Scheme

CFSS-2020 allows the Companies which have made a default in filing of any of the documents, statements, returns, etc including annual statutory documents on the MCA-21 registry without any additional fees and grants immunity from launching of prosecution or proceedings for imposing penalty on account of delay associated with these filings. The Scheme also allows for a simple filing for inactive companies to become dormant Company.

It is pertinent to note that the immunity is allowed only for additional fees and proceedings for imposing penalty on account of delay associated with these filings. There is no immunity for any consequential proceedings, including any proceedings involving any interest of any shareholder or any other person qua the Company or its directors or KMP would not be covered by the Scheme.

Example: If PAS-3 (return of allotment) for allotment of shares through Private Placement is not filed within 15 days of the allotment, the same will be covered under the CFSS-2020 Scheme. But the Scheme will not be applicable if the money is utilized before filing PAS-3.

APPLICABILITY

The Companies can file document/form which is due for filing on any given date including forms like AOC-4, MGT-7, INC-22, MGT-14, ADT-1 , PAS-3 etc. The MCA has placed on its website list of forms which are eligible under the Scheme. The link for the same is <http://www.mca.gov.in/Ministry/pdf/CFSS2>

Effective Date

The scheme shall come into force on the 01st April, 2020 and remain in force till 30th September, 2020.

NON APPLICABILITY

- Form SH-7, CHG-1, CHG-4, CHG-8 and CHG-9
- Application already being filed for obtaining Dormant status under Section 455 of the Companies Act, 2013 before the CFSS-2020 was introduced.
- Amalgamated Companies
- Application already being filed by the Company for striking off
- Companies against which action for final notice for striking off the name u/s 248 or 560 of the Companies Act has already been initiated by the ROC

MANNER OF FILING

Step1 : The Companies have to file all the belated documents/forms by paying normal fees as prescribed under the Companies (Registration Offices and Fees) Rules, 2014 any date between 01st April, 2020 to 30th September, 2020

Step 2: File CFSS-2020 by entering all the SRNS of the belated forms filed.

Step3: ROC will approve or take on record all documents within 6 months from the closure of the Scheme

Step 4: Based on the declaration made in CFSS-2020, an immunity certificate in respect of documents filed under the scheme shall be issued by the ROC.

IMMUNITY

The immunity shall not be applicable in the matter of any appeal pending before the court of law and in case of management disputes of the Company pending before any court of law or tribunal.

The immunity shall not be provided if the Court has ordered conviction in any matter, or imposing penalty has been passed by an adjudicating authority under the act and no appeal has been preferred before the scheme has come into force.

After granting the immunity, ROC shall withdraw the pending prosecution(s) if any except the one mentioned in the above paragraph

POINTS TO BE NOTED

In case where, the adjudicating authority has passed an order for delay associated in filing of forms/documents and no appeal has been preferred by the concerned Company as on the date of commencement of the scheme i.e. 01st April, 2020, the following would apply:

- An additional period of 120 days shall be allowed to the Companies with effect from last date of filing the appeal where the last date falls between 01st March, 2020 to 31st May, 2020.
- During such additional period no prosecution for noncompliance of the order passed by the adjudicating authority shall be initiated against the Company insofar as it relates to delay associated in filing of forms/documents

Note: Please note that the additional 120 days will be provided only in case where the appeal period fall between 01st March, 2020 to 31st May, 2020.

Example 1: The adjudicating authority has passed an order on 25th February, 2020. As per Section 454 of the Companies Act, 2013, the Company has a period of 60 days for filing an appeal . Accordingly, the appeal period in the above case falls between 01st March, 2020 to 31st May, 2020 and therefore the additional 120 days period will be provided, and the immunity will also be provided after the necessary compliance of the CFSS -2020 Scheme .

Example 2: The adjudicating authority has passed an order on 25th November, 2019 and the Company has not filed an appeal before 01st April, 2020. In this case no additional period and no immunity will be granted.

DISCLAIMER

This note has been prepared for general guidance on matters of interest only and does not constitute a professional advice.
