

Companies Fresh Start Scheme, 2020

Ministry of Corporate Affairs("MCA") has issued Companies Fresh Start Scheme 2020 vide Circular 12/2020 dated 30th March, 2020 in furtherance of the Ministry's Circular No. 11/2020, dated 24th March, 2020 in order to facilitate the companies registered in India to make a fresh start, has decided to take certain measures for the benefit of the companies.

Key Highlights

- The Scheme shall remain in force from 1st April 2020 to 30th September 2020.
- This Scheme permits all the companies incorporated under Companies Act 2013/1956 file their belated documents including annual filings by paying normal fees (without any additional fees) as per the provisions of section 403 read with Companies (Registration Offices and Fee)Rules, 2014
- This Scheme grants immunity from launching of prosecution or proceedings for imposing penalty on account of delay associated with certain filings.
- Immunity under the said scheme pertains only to delay associated in filing of necessary documents with the registry and not with other consequential proceedings.

For Example:

Under Section 42(8), every company is required to file a return of allotment within a period provided therein. However, the proviso to section 42(4) also requires that money raised through private placement shall not be utilized unless the return of allotment has been filed with the registry.

Immunity under the said scheme shall be provided only in respect of the proceedings for imposing penalty on account of delay of filing of return of allotment but not against utilization of money raised through private placement prior to filing of return of allotment with the registry.

- In case the defaulting company, with respect to any statutory filing under the Act, or its officer, as the case may be has filed any appeal against any notice issued or complaint filed or an order passed by court or by any adjudicating authority under the Act, before a competent court or authority for violation of provisions under companies Act 1956/ 2013 in respect of the same willing to avail the benefit of Immunity under the said scheme, the defaulting company has to first withdraw the application of appeal filed against the order of prosecution by the competent authority or adjudicating authority as the case may be and furnish the proof of withdrawal of appeal.
- Delay associated in filing of any document, statement or return, etc. in the MCA-21 registry, penalties were imposed by an adjudicating officer under the Act, and no appeal has been preferred by the concerned company or its officer before the Regional Director under section 454(6) as on the date of commencement of the Scheme, the following would apply:-
 - (A) Where the last date for filing the appeal against the order of the adjudicating authority under section 454(6) falls between the 1st March, 2020 to 31st May, 2020 (both days included), a period of 120 additional days shall be allowed with effect from such last date to all companies and their officers for filing the appeal before the concerned Regional Directors;
 - (B) During such additional period as stated in (A) above, prosecution under section 454(8) for non-compliance of the order of the adjudicating authority, insofar as it relates to delay associated in filing of any document, statement or return, etc. in the MCA-21 registry shall not be initiated against such companies or their officers;
- Application for seeking immunity in respect of belated documents filed under the scheme may be made electronically in **Form CFSS-2020 but shall not be filed beyond six month from the date of expiry of the scheme .**

There shall not be any fee payable on this Form.

Exceptions from seeking immunity:

 - ❖ No immunity for any appeal pending in the court against the company management disputes.
 - ❖ No immunity for any case of conviction ordered passed by a court or adjudicating authority & no appeal preferred by the company or officers before the scheme came in enforce
- Immunity Certificate in respect of the documents filed under the Scheme shall be issued by the designated authority.
- **Scheme not applicable in following cases:**

- (a) Companies against which final notice for Striking off the name initiated;
- (b) Companies which have voluntary filed application for Striking off the name;
- (c) Companies which have been amalgamated;
- (d) Companies applied for Dormant Status;
- (e) to vanishing companies;
- (f) Where any increase in authorized capital is involved (Form SH-7) and also charge related documents (CHG-1, CHG-4, CHG-8 & and CHG-9);
- After granting the immunity certificate, the designated authority shall withdraw the prosecution(s) pending, if any, before the concerned court(s) or adjudicating authority as the case may be.
- **Scheme for Inactive Companies:**
The defaulting inactive companies applied for the CFSS-2020 for filing due documents and simultaneously apply for the following actions are:-
 - (a) Application for dormant status under section 455 of the companies act, 2013 by filing MSC-1 to ROCs with nominal fees;
 - (b) Application for striking off the name of the company from ROCs.
- At the conclusion of the Scheme, the Designated authority shall take necessary action under the Act against the companies who have not availed this Scheme and are in default in filing these documents in a timely manner.

For the detailed reading of original notification you may click on the below given link:

http://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf

Suggestions may be sent to rupesh@cacsindia.com

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