

## Companies Fresh Start Scheme, 2020

Ministry of Corporate Affairs (“MCA”) has issued Companies Fresh Start Scheme 2020 vide Circular 12/2020 dated 30<sup>th</sup> March, 2020 in furtherance of the Ministry’s Circular No. 11/2020, dated 24<sup>th</sup> 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.

This Scheme however came into force at the same time when several relaxations are provided due to lockdown pertaining to spread of Covid-19, but CFSS-2020 is not rolled out as a measure amid COVID-19 only. It is one time opportunity to enable defaulting companies to complete their pending compliances by filing necessary documents in the MCA-21 registry.

### **Duration of Scheme**

- The Scheme shall remain in force from 1<sup>st</sup> April 2020 till 30<sup>th</sup> September 2020.

### **Applicability**

- This Scheme shall be applicable on every active company which is a ‘defaulting company’ and permits to 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.

### **“Defaulting Company”**

“Defaulting company” means a company defined under the Companies Act, 2013, and which has made a default in filing of any of the documents, statement, returns, etc. including annual statutory documents (AOC-4 & MGT- 7) on the MCA-21 registry.

### **Immunity from prosecution**

- Immunity shall be granted under this scheme only from the prosecution for delay or non-fillings of such form, return etc. and not with other consequential proceedings. Thus the immunity offered is not total and limited to filing related default only.

- 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.

After granting of Immunity, any adjudicating proceedings and prosecution shall be withdrawn except in following situation:

- (i) Where an appeal is pending before the competent court or authority.
- (ii) Where the court has ordered the conviction or no appeal has been against the order of adjudicating officer before the Scheme has come into effect.

### **Withdrawal of appeal before applying for immunity**

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, 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.

### **Extension for filing of appeal against the order of ROC**

A period of Additional 120 days has been granted to file an appeal with Regional Director where;

- (i) Such order is relating to default of non-filings and last date for filing an appeal is between 1<sup>st</sup> March to 31<sup>st</sup> May, 2020 with competent authority.
- (ii) No actions would be undertaken by the authorities pursuant to such order during this period.

### **Special measures for cases where penalty order was passed but appeal could not be filed**

- 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) The Company or officers are allowed 120 days to file an appeal before the regional director if the last date of filing appeal falls between 1st March 2020 to 31st May 2020
  - (B) No prosecution initiated against the Company or officers for non-compliance of adjudicating authority order under section 454(8) of the companies act, 2013

### **Application for Grant of Immunity**

- Post closure of this scheme and documents has been duly taken on record by the Registrar of Companies but not later than six months from the closure of Scheme. An Application eform-CFSS-2020 shall be file for granting immunity from prosecution.

### **Order by Designated Authority for granting immunity from penalty and prosecution**

On the basis of declaration made in eform-CFSS-2020, an immunity certificate in respect of documents filed under scheme shall be issued by the Registrar of companies having jurisdiction over the registered office of the company.

### **Post conclusion of scheme, necessary penal against the defaulting companies, to be taken by the Designated Authority.**

After the conclusion of this scheme, Registrar of Companies shall take necessary penal actions against those defaulting companies who have not availed this scheme and in default of filling these documents in a timely manner

### **Scheme for Inactive Companies**

After filling relevant forms under CFSS Defaulting Inactive companies may apply to obtain a dormant status or apply for striking off by following the procedure prescribed under the companies Act, 2013.

### **Non-Applicability of the Scheme**

- i) Companies against which final notice of strike off has been issued by R.O.C
- ii) Companies that have filed STK-2 (i.e applied for strike off their name from the register)
- iii) Amalgamated Companies.

- iv) Companies that have applied for obtaining dormant status.
- v) Forms relating to increase in share capital and charge such as SH-7, CHG-1, CHG-4, CHG-8 and CHG-9.
- vi) Vanishing Companies.

**Forms on which scheme is applicable**

- The Ministry of Corporate Affairs (MCA) has uploaded a list of 76 forms (including for companies and LLP's) for which the benefit of the Scheme can be availed. This includes forms related to all IEPF forms, annual forms, BEN-2, DPT-3, PAS-3, INC-22A, MGT-14.
- For further details refer the link mentioned below:

[http://www.mca.gov.in/Ministry/pdf/CFSS2020\\_02042020.pdf](http://www.mca.gov.in/Ministry/pdf/CFSS2020_02042020.pdf)

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](http://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf)

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**Suggestions may be sent to [rupesh@cacsindia.com](mailto:rupesh@cacsindia.com)**

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