
COMPANIES FRESH START SCHEME, 2020.

Introduction:

The Ministry of Corporate Affairs (“MCA”) had, in the circular dated 24th March 2020 inter alia provided certain relaxations and special measures providing immunity to the companies and LLPS with respect to delayed filing of forms in view of the Covid-19 pandemic. In furtherance of the same, the Companies Fresh Start Scheme, 2020 (“Scheme”) has been rolled out on 30th March 2020 vide general circular no. 12/2020 (“Circular”) to provide defaulting companies an opportunity to make a fresh start by filing all e-forms without any additional fees between 1st April 2020 to 30th September 2020, irrespective of the due date.

Applicability:

The Scheme is applicable to all defaulting companies i.e. companies which have made a default in filing any of the documents, returns, statements, etc. with the MCA.

Companies and E-forms exempted from this Circular:

The following companies are exempted from the applicability of this Scheme:

1. Companies against which action for striking off has been initiated by the Designated Authority under Section 248 of the Companies Act, 2013 (“Act”);
2. Companies which have filed an application for striking off under the Act;
3. Companies which have been amalgamated under a scheme of arrangement/amalgamation or compromise under the provisions of the Act;
4. Companies which have filed an application for obtaining the status of a dormant company under Section 455 of the Act; and
5. Vanishing companies i.e. companies which had raised funds from public through an initial public offer (IPOs) and subsequently failed to comply with the listing and/or the filing requirements of Registrar of Companies (ROC) and the Stock Exchanges for a period of 2 (two) years and were not found to be operational at their registered office address at the time of inspection done by appropriate authorities/Stock Exchange.

In addition to the above, the Scheme shall not be applicable to the following e-Forms:

1. e-Form SH-7 (Notice to Registrar of any alteration of share capital) where any increase in authorised share capital is involved; and
2. e-Forms pertaining to charge related documents i.e. CHG-1, CHG-4, CHG-8 and CHG-9.

Manner of filing and payment:

As per the Circular, the companies which are desirous of availing such benefit are required to file the e-form CFSS-2020 (the draft version of the form has been annexed with the MCA Circular). As per the draft form and the draft immunity certificate, attached to the Circular, the SRNs of the e-forms against which immunity is to be sought has to be mentioned. Accordingly, the Scheme requires the defaulting companies to clear all their pending filings by 30th September 2020 by paying the fees as prescribed under the Companies (Registration Offices and Fees) Rules, 2014. Once all pending filings are made good, thereafter, the companies shall have to file e-Form CFSS-2020 within 6 (Six) months from the closure of the Scheme (i.e. by March 30, 2021), based on which an immunity certificate in respect of the documents filed, shall be issued by the designated authority.

Effect of Immunity:

Once the immunity certificate in respect of the documents filed under the Scheme, has been issued by the designated authority, then the designated authority shall proceed to withdraw the prosecutions filed before any courts and/or the proceedings pending before any adjudicating authority in respect of the documents for which the immunity has been granted.

However, in the following cases, no immunity shall be granted:

1. Where any appeal is pending before any court of law;
2. In case where management disputes of a company are pending before any court of law or tribunal; and
3. Where any court has ordered a conviction, or an order imposing penalty has been passed by the adjudicating authority and no appeal has been preferred against such orders, before this Scheme came into force i.e. before 1st April 2020.

Further, any consequential proceeding, other than fresh launching of prosecution or imposing of penalty with respect to filing of forms, including any proceedings involving interests of any stakeholder or any other officer-in-default will not be covered by this immunity. Accordingly, if the provision of law mandates an action to be taken only post filing of a certain form, and such action has been done without filing of such form - in such case, while the filing of the form will be immunised under CFSS, the action which was ought to be done consequently upon filing, cannot be immunised.

Special Cases:

1. Where any appeal has been filed and is pending against any notice issued or complaint filed or an order passed by a court or by an adjudicating authority under the Act for violation of provisions under the Act or under the Companies Act, 1956, then such defaulting company in order to avail the benefit of this Scheme will be required to withdraw such appeal first and the proof of withdrawal will have to be attached with the CFSS application.
2. Where no appeal has been filed against any order passed by an adjudicating authority within the requisite timeline, the timeline to file appeal shall be increased by another 120 (One Hundred and Twenty) days from such last date in cases where the last date of filing appeal falls between 1st March, 2020 to 31st May, 2020.

Consequences of defaulting companies not availing the Scheme:

In case, the defaulting companies fail to avail the benefit of this Scheme, then the respective authorities having jurisdiction over such companies, shall have the right to take the necessary actions pursuant to the provisions of the Act, in respect of all those companies which continue to be in default.

Scheme for Inactive Companies:

The defaulting inactive companies while filling application under e-Form CFSS-2020, may also file:

1. e-Form MSC-1 to obtain the status of a dormant company under Section 455 of the Act;
or
2. e-Form STK-2 for striking off the name of company.

Conclusion:

The Scheme has been launched with an intent to allow the defaulting companies a one-time opportunity to complete all their pending compliances by filing necessary documents with the MCA registry including annual filings without being subject to a higher additional fees on account of delay, thereby reducing the companies compliance burden.

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