

“Fresh start over a Clean Slate”

CFSS-2020

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Fresh Start

Covid-19 if taken positive then this Circular dated 30th March, 2020 from the Ministry of Corporate Affairs must be the first one to note down on a plain paper specially by every Defaulting Companies and those Companies whose name has been struck off by the Registrar of Companies due to non-filing of Financial Statements and Annual Returns of its preceding years and Promoter of whose are willing to opt their Company's name to restore back on the records of the Registrar. Also the happy are those whose appeal for the restoration of their Company's name are pending before the National Company Law Tribunal. Through this Circular many of such Defaulting Companies have already saved a lot of money which otherwise would have been spent in terms of additional filling fee since, with this scheme such companies have got their final chance to either clean their dirty slate to write fresh-one over it or else to register as dormant entity and to opt for its closure if after a certain years the economic situation does not assist them to spring up their operations.

First & Final Opportunity

The Nationwide lockdown caused due to Covid-19 outbreak has also blessed those defaulting Companies who has defaulted in filling of statutory documents & return in those years when Covid-19 was nowhere not even in Google. In order to give an opportunity to the defaulting Companies by enabling them to file its belated documents in MCA-21 registry, The Ministry of Corporate Affairs has introduced Companies Fresh Start Scheme- 2020 condoning the delay in filling with Registrar and specified Moratorium Period i.e. from 1st April, 2020 to 30th September, 2020 during which no additional filling fees shall be charged for late filing of specified overdue document, return, and statement etc. of earlier years irrespective of its due dates. There are several event based and annual compliances based forms under the Companies Act from which no companies are exempt and non-filing of such documents and return on time attract additional filling fee, penalties, prosecution, adjudication and many a times enquiries may also be initiated against such companies which may results to inspection and investigation but this scheme has compressed many of such consequences.

The Ministry has come up with list of certain returns/ forms which are required to be filled under the provisions of the Companies Act, 2013 and which were required to be filled under the erstwhile Companies Act, 1956 for which the benefit of scheme can be availed but the same shall not be applicable for filling of form with regards to the registering creation of charge or modification of charge or satisfaction of charge or for which the notice is required to be given to Registrar in case of increase in the Authorized Capital.

Also, the Companies against which an action for final notice u/s. 248(4) of the Companies Act, 2013 or u/s. 560 of the Companies Act, 1956 has already been initiated by the Registrar of Companies for striking off the name or the Companies who has already filed the application for action of striking off the name of the company from the register of companies, the benefit of the scheme shall not be availed by these Companies in such case.

The Scheme shall not give its benefit to such Companies which have amalgamated under a scheme of arrangement or compromise under the Act and where pursuant to Sec. 232(5) of the Companies Act, 2013 such company are required to cause a certified copy of the order to be filed with the Registrar for registration by filling Form INC-28 within thirty days of the receipt of certified copy of the order.

Benefits of availing Scheme on Time

The Scheme applies to all the defaulting companies irrespective of its type i.e. Private Company, One Person Company, Public Company, Sec. 8 Company, Nidhi Company or Producer Company which has defaulted in filing of any of the specified documents, returns, statement etc. on time on the MCA-21 registry including annual statutory documents. This Scheme has come up with following advantages and immunities, such as:

- Only Nominal Filing Fee for belated documents are required to be paid and Company will get a complete relaxation from the additional filing fee.
- No prosecution against the Company and its Officers will be initiated if overdue documents shall be filled within the tenure of the scheme.
- No proceedings against the Company and its Officers shall be initiated for imposing penalty on accounts of delay associated with specified forms and returns if overdue documents shall be filled within the tenure of the scheme.
- Defaulting inactive Companies after filling due documents under scheme have got an opportunity to register/ declared themselves as Dormant Company to enable them to remain on the records of ROC with minimal compliances.
- ROC shall withdraw the pending prosecution or proceedings connected to the belated fillings made under the Scheme.

Immunity Certificate

Every defaulting companies after filling of all its overdue documents and returns within the time frame provided under this Scheme shall apply to the Registrar of Companies in Form CFSS-2020 to get Immunity Certificate but such application is required to be made within the expiry of six months from the date of closure of the Scheme. This certificate shall immune Company & its officer in default from the launch of prosecution or proceedings for imposing the penalty on companies with respect to the filling of belated documents.

The Company is also required to declare at the time of making an application for Immunity Certificate that no petition or appeal was filed against any notice issued or complain filled before any Court or NCLT or NCLAT or RD or any other adjudicating authority for violation of the provision of the Act in respect of form/ documents specified in form CFSS and if any petition or appeal was made then the same has been withdrawn and the proof of withdrawal of appeal is required to be attached.

The immunity shall be granted from the launch of prosecution or proceedings and the same shall be provided only to the extent such prosecution or the proceedings pertains to any delay associated with filling of belated documents in the registry and no Company or its officers shall get immune from their past wrong doings and misdeeds or any other noncompliance committed under the Act such as non-calling of an AGM before due date, misstatement in annual return, misapplication of fund raised through allotment of securities or appoint of KMP in violation of Sec. 197 or schedule V of the Act, appointment of Director by wrongful means etc. Hence the Stakeholders/ Investors whose interest have been damaged or competent authority can initiate the needful actions against such non-compliances committed under the Act.

The immunity shall not be applicable in the matter of any appeal pending before the court of law and in case of management disputes pending before Court or Tribunal. No immunity shall be provided in case any court has ordered conviction in any matter, or an order imposing penalty has been passed by the ROC under the Act, and no appeal has been preferred against such order the Court or ROC, as the case may, before the scheme has come into force.

This Scheme gives an additional time limit of 120 days for filling of an appeal before the Regional Director u/s. 454(6) of the Companies Act, 2013 where the due date for filling of an appeal against the order of adjudicating authority imposing the penalty in respect of non-compliance of belated documents filed under the subjected scheme has fall between the period of 01st March, 2020 to 31st May, 2020.

Some Wrong Doers can't be Immune

Those Companies which are registered under the Companies Act, 2013 or previous company law or any other law for the time being in force and which are listed with Stock Exchange and has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable, such Vanishing Companies are not allowed to gain anything out of this Scheme.

Last Opportunity This lockdown phase which in no case shall come in anyone's life once this pandemics gets settled & get out of news. This is a perfect time to utilize professionally, personally and to strengthen the bond within a family members. Likewise the defaulting Companies have got their first & last change to file all their overdue returns and forms and have a fresh start with updated Compliances on its Slate.

This scheme should also be considered as a caution notice for such defaulting companies wherein such Companies are allowed to avail any of the alternatives provided under the Scheme i.e. to file all those overdue documents and returns with nominal fee irrespective of its due date, or else to register defaulting inactive company as Dormant Company which enables such companies to remain on the records of Registrar with minimal compliance formalities or such companies are also permitted to apply voluntarily u/s 248(2) for striking off its name from the records of Registrar, in case of failure to opt for any of these alternatives by such defaulting Companies, the Registrar of Companies shall take all the necessary actions under the Act against such Companies, their present and past officers and no immunity shall be granted thereafter.

About Author's



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The Authors are from the firm of Company Secretaries based in Ahmedabad (Gujarat) which majorly deals into the domain of Corporate Compliances and Litigation Management Practice under the Corporate Law and Insolvency & Bankruptcy Code in India.