

Condonation of Delay Scheme, 2018 (effective from 01st January, 2018 till 31st March, 2018)

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CONDONATION OF DELAY SCHEME, 2018

All companies registered in India including private limited company, one person company, limited company, section 8 company and others are required to file annual return with the Ministry of Corporate Affairs each year.

Under the new Companies Act, 2013, Directors of Companies which have defaulted in filing annual return continuously for a period of 3 years are liable for disqualification. On disqualification, the Director would be unable to incorporate a new company or act as Director of an existing company for a period of three years.

In addition of disqualification u/s 164(2), according to Rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014 further prescribes that every director shall inform to the company about his/her disqualification, if any, under section 164(2), in form DIR-8.

Around 3,09,614 Directors were recently disqualified u/s 164(2) by the Ministry of Corporate Affairs for chronic default in filing company annual return, which as a result vacation of office u/s 167 of the Act, 2013 was attracted consequently.

Aggrieved by the disqualification many disqualified Directors had made representations to the Ministry of Corporate Affairs and approached the National Company Law Tribunal and High Courts for staying order of disqualification. Taking into consideration the representations made by various stakeholders, the Central Government and Ministry of Corporate Affairs has now introduced the Condonation of Delay Scheme to provide a final opportunity for defaulting companies and Directors to regularize compliance before 31st March, 2018.

Some important glimpses of condonation of delay scheme, 2018 in very simple interpretation are presented as below:-

1. The scheme shall be operational from 01st January, 2018 to 31st March, 2018.
2. According to CODS, 2018 "Defaulting Company" means a company which has not filed its financial statements or annual return as required under the Companies Act, 1956 or Companies Act, 2013, as the case may be, and the Rules made there under for a continuous period of three years other than the companies which have been stuck off/whose names have been removed from the register of companies under section 248(5) of the Act.
3. According to CODS, 2018 "Overdue Documents" means financial statements or the annual returns or other associated documents, as applicable, in the case of a defaulting company.
4. Steps to be followed for the purpose of the scheme:-
 - a. The DINs of the disqualified directors de-activated at present shall be temporarily activated during the validity of the scheme to enable them to file the overdue document.

- b. The defaulting company shall file the overdue documents in the Form e-CODS 2018 paying the statutory filing fee and additional fee of Rs. 30,000 (Rs. Thirty Thousand) payable as per section 403 of the Act read with Companies (Registration Offices and fee) Rules, 2014 for filing these overdue documents.
 - c. The DINs of the Directors associated with the defaulting companies that have not filed their overdue documents and the form CODS, and these are not taken on record in the MCA21 registry and are still found to be disqualified on the conclusion of the scheme in terms of section 164(2) (a) r/w 167(1) (a) of the Act shall be liable to be deactivated on expiry of the scheme period.
 - d. In the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN shall be re-activated only NCLT order of revival subject to the company having filing of all overdue documents.
5. **Scheme not to apply for certain documents** – This scheme shall not apply to the filing of documents other than the following overdue documents:
- a. Form Number 20B/MGT-7- Form for filing Annual Return by a company having share capital.
 - b. Form 21A/MGT-7- Particulars of Annual return for the company not having share capital.
 - c. Form 23AC, 23ACA, 23AC-XBRL, 23ACA-XBRL, AOC-4, AOC-4(CFS), AOC (XBRL) and AOC-4(non-XBRL) – Forms for filing Balance Sheet/Financial Statement and profit and loss account.
 - d. Form 66- Form for submission of Compliance Certificate with the Registrar.
 - e. Form 23B/ADT-1- Form for intimation for Appointment of Auditors.
6. The Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s) for all documents filed under the scheme. However, this scheme is without prejudice to action under section 167(2) of the Act or civil and criminal liabilities, if any, of such disqualified directors during the period they remained disqualified.
7. At the conclusion of the Scheme, the Registrar shall take all necessary actions under the Companies Act, 1956/ 2013 against the companies who have not availed themselves of this Scheme and continue to be in default in filing the overdue documents.

Contact Information

For more information, kindly contact us at:

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THANKS



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