THE CORPORATE JURISTS

YOUR REGISTRATION & COMPLIANCE PARTNERS

Companies Fresh Start Scheme, 2020 – The CFSS Scheme

For the Ministry of Corporate Affairs, the year 2018 was a year of imposing Penalties, striking off the bogus and shell companies, passing disqualification orders against defaulting Directors, putting additional compliances in place for filtering and tracking such shell and Bogus companies and creating embargoes on Corporate Defaulters through various amendments in the Companies Laws to ensure compliances using tighter measures for the Corporate Sector. The Year 2019 was no different as the companies Law regulator introduced the concept Independent director's data bank and mandatory online proficiency test for Independent Directors and many other new compliance requirements. The MCA also introduced many new reforms to promote ease of doing business in India.

In the beginning of the year 2020, the Companies regulator surprised the stakeholders by introducing and implementing the SPICE+ & Agile pro-web-based forms for the Incorporation of Companies.

Amid all the hoopla and brouhaha surrounding the recent amendment for the increase of Paid-Up share capital Threshold for the appointment of Company Secretaries, the MCA continued surprising the stake-holders by Introducing certain palliative measures through its circular dated 30/03/2020. It comes as a big Succor for the India Inc. especially the Genuine Law Abiding Corporates therein who have a long-standing list of non-compliances due to which they have come on the radar of the India Inc. watch Dog, Registrar of Companies, (ROC) being considered as shell companies and hence are about get struck off because of continuing default in filings.

The #CFSS-2020 - Companies Fresh Start Scheme 2020. (Will be in force from 01-04-2020 to 30-09-2020)

Chance to file all pending Annual returns, Financial Statements, and other pending returns and Documents at no Additional Fee. Norma fee would have to be paid. No Penalty and Prosecutions will be initiated against the belated filings as such. : **Many thousands and evens lakhs will be saved.**

1. **Which e-forms are not covered:**

    - ✓ SH-7
    - ✓ All charge related e-forms
    - ✓ MGT -14 - Only such MGT-14 forms will be allowed to file wherein the delay is of not more than 300 days. For MGT-14 with a delay of 300 days or more MGT-14 cannot be filed normally also, had this scheme had not been introduced. Because for delay beyond 300 days, MGT-14 eform prompts to enter SRN of INC-28 filed for condonation of delay for such cases.

2. **Is this that easy, no separate application required for availing the scheme like for condoning the delay, Just file the pending forms without additional fees and Hurray! Is that so?**

   Yes, it is that simple with following riders though:

- No prior application as such for condoning the delay
- Post completion of all the pending filings and after the closure of the scheme but not later than 6 months, the concerned defaulting companies need to file a simple application through e-form CFSS-2020
- Post filing CFSS-2020 an Immunity Certificate will be granted in the form of approval for the said e-form.

3. **The Immunity**

- Designated Authority (Registrar of Companies) shall withdraw any pending prosecutions before the concerned court(s) and the proceedings for adjudication of penalties under section 454 of the Companies Act, 2013, in respect of defaults against which immunity has been granted and the same shall be deemed to be have been cured and completed and no further penal action will be taken by the Designated Authority.
- Immunity only to the extent such prosecution or the proceedings for imposing a penalty under the Companies Act, 2013 pertaining to the delay associated with the filings of belated documents
- Immunity shall not be given to the Directors who have been disqualified due to non-filing of returns by their companies, the status of their DIN will continue to be the same even after filing such returns. However, for the DIN’s that have been deactivated due to non-filing of DIR-3KYC e-form and web form can be reactivated by filing the same under this scheme at Zero fees.
- No immunity in pending cases, where the appeal has not filed by the company or the officer in default but such appeal has been filed against the company by any other authority or a party other than ROC and is pending before a court of Law or Adjudicating Authority and in case of management disputes pending before any court of Law.
- No Immunity for cases where the order has already been passed for conviction of for imposing Penalty and no appeal has been filed against such orders before this scheme comes into force.
- So, in a Nutshell, immunity shall be given only against the orders for prosecution and imposing penalties, passed or proposed to be passed by ROC in respect of belated filings and not any other orders passed by any other Adjudicating Authority. In such cases, only special measures have been taken by allowing an additional period of 120 days to file an appeal against such orders as mentioned below.

4. **Pre-Conditions for filing Application for Grant of Immunity: Before applying in CFSS-2020 to claim immunity the Prior requirements are:**

   - Complete the Belated Filings
   - Concerning the belated filings, the defaulting company or its Officer in default, as the case may be, if have filed any appeal against any Notice or complaint filed or an order passed by the Court or an Adjudicating Authority under the Act, before a competent court or authority for violation of the provisions of the Companies Act, 2013 /1956 in respect of which application is being made to avail immunity under this scheme shall before filing such application, withdraw the said pending appeals and furnish proof of Withdrawal along with the application.

5. **What about the companies where the order has already been passed for belated filing of returns by any adjudicating authority but an appeal could not be made. ?**

- In the cases, wherein the penalties are imposed under the Act and the company or officer in default has not further appealed to higher authorities and such period of the appeal lies between 1st March 2020 to 31st May 2020, a period of additional 120 days be allowed for the filing of an appeal from the last date as may be specified under the order. (Only for Section 455 (6) of the Act). During such a Period the prosecution for non-Compliance with Penalty order shall not be initiated.

6. **The scheme not to apply in certain cases as follows:**

- Suo-Motto Strike off has already been initiated
- Where an application for Strike off has been filed by the company itself.
- Amalgamated Companies
- Vanishing Companies
- Companies who have applied for obtaining Dormant Status
- And Other cases of certain e-forms as mentioned above.