XCEDE

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CFSS- 2020

ONE-TIME OPPORTUNITY FOR DEFAULTING COMPANIES

CFSS 2020 Applicability on forms / returns filed during Moratorium Period??

Companies Fresh Start Scheme, 2020

"Now or Never opportunity"

Last Date 30.09.2020

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Is your Entity non – compliant?

Make it compliant without penalty.

Read CFSS Scheme 2020

"Now or Never Opportunity"

Coronavirus Disease 2019 (COVID-19) is a Pandemic disease. Government of India has declared Lock-down in various states and for corporate sectors, employees and employers both are advised to work from home. Ministry of Corporate Affairs (MCA) has taken preventive steps via issued guidelines and relaxation in Corporate Filings due to COVID-19 Outbreak.

MCA has Launched Corporate Revival Schemes: One time opportunity for Defaulting Corporate including Companies and LLP to become Compliant Entities.

Aim is to provide a clean slate to all those law-abiding companies, giving them extended time and a certain level of financial relief with regard to compliances considering the current global situation.

Corporate Revival Schemes introduced by MCA are to promote Corporate Governance and rescue defaulting Corporate:

- Company Fresh Start Scheme, 2020 (CFSS-2020)
- LLP Modified Settlement Scheme, 2020

Companies Fresh Start Scheme, 2020 (CFSS-2020)
Overview: The Ministry of Corporate Affairs (MCA) vide its General Circular No. 12/2020 dated 30.03.2020 has came up with the Companies Fresh Start Scheme, 2020 for one-time application of condonation of delay of filling the various documents, forms, returns etc. with the Registrar.
Applicable: Applicable w.e.f. 01.04.2020 and shall remain into Force up to 30.09.2020. In all Approximately 54 Forms of Companies Act, 2013 and 10 Forms of Companies Act, 1956 are Covered under the Scheme.

Scope of this Scheme:

Any 'defaulting company' is permitted to file belated documents which were due for filing on any given date in accordance with the provisions of this Scheme:

Immunity from the launch of prosecution or proceedings for imposing penalty shall be provided only to the extent such prosecution or the proceedings for imposing penalty under the Act pertain to any delay associated with the filings of belated documents.

Key Points:

1. It is Compulsory to File Form DIR 3 KYC/ webform DIR 3 KYC of all the Existing directors of Defaulters Companies before availing the benefit of the said Scheme

2. It is compulsory to file Active Form INC-22A. Only the companies whose status is Active will be able to seek the benefit of the scheme.

3. Immunity will be Granted only for those forms that will be filed in ***CFSS duration i.e. 01/04/2020 to 30/09/2020*.**

4. Delayed MGT -14: For filing MGT-14 beyond 300 days, condonation is required. However, AoC-4 for the past year(s) can be filed without any condonation.

5. Company is under NCLT, and Operations are managed by IP: Can take benefits if Company status is not struck off and if it struck off it can take the benefit after it is revived

6. Foreign company having Project Office in India – Yes Applicable

7. Annual Filing Form – AOC 04 filed with inadvertent errors:

AoC-4 or any other STP form filed with inadvertent errors can be marked as 'defective' by the jurisdictional RoCs based on evidence and formal request. Once the particular STP is marked as defective fresh filing has to be made.

Link of the Circular: **Click Here**

Important links:

- **List available Forms at Source / Link:**
  http://www.mca.gov.in/Ministry/pdf/CFSS2020_02042020.pdf

- **FAQ's on CFSS 2020 and Modified LLP Settlement Scheme, 2020:**
  http://www.mca.gov.in/Ministry/pdf/FAQCFSS_15042020.pdf

➢ Important provisions

Belated documents have to be filed during the currency of the scheme (CFSS Scheme, 2020). **If the scheme benefits are availed**, such a company **has to file the CFSS eform** on or after 1st October, 2020 and before 31st March, 2021.

(Reference has been taken from FAQ's on CFSS Scheme, 2020)

As per interpretation, CFSS Scheme 2020, is also applicable on the forms or returns filed under Moratorium Period i.e. from 01.04.2020 to 30.09.2020.

➢ Forms under CFSS Scheme, 2020

Total 76 Forms will be allowed to be filed with MCA under these two Schemes, out of which 10 forms are pertaining to the Companies Act, 1956, 12 forms are pertaining to LLPs and 56 forms are pertaining to the Companies Act, 2013.
The list of Forms: *Click here*

➢ Authorization to file CFSS Form, 2020

Board of Directors of the Company is required to pass resolution authorizing Director/ CFO/ CEO or CS to file the Form CFSS and the immunity is only with respect to filing of the belated documents under the Scheme.

➢ Non-Applicability of the CFSS, 2020 On Certain E-Forms

- Increase in the Authorized Capital (Form SH – 7)
- Charge related documents (CHG – 1, CHG – 4, CHG – 8, CHG – 9)

➢ **Private companies have been provided several exemptions under law. Will the CFSS have any effect on the same? (reference taken from** click here**)**

Exemptions to private companies, or for that matter, any exemption, has nothing to do with the benefit to be availed under CFSS. The applicability of CFSS is to be checked from the date of filing and not the due date of filing.

MCA FAQ's on CFSS, 2020.

For Companies

To provide guidance and clarity to the stakeholders MCA has came up with the FAQ's on FAQs on Companies Fresh Start Scheme (CFSS), 2020 and LLP Modified Settlement Scheme, 2020. *(FAQ's related to CFSS Scheme, 2020)*

FAQs on Companies Fresh Start Scheme (CFSS), 2020 and LLP Modified Settlement Scheme, 2020
1. Is the CFSS 2020 applicable on foreign company? Will the forms FC-1, FC-2 and FC-3 be covered under the scheme? **Ans:** Yes.
2. How to file the belated returns for companies under liquidation? **Ans:** Only Refund form, GNL-2 (149, 152, 153, 154, 156, 157, 158, 159 and others), INC-28 (Amalgamation/Merger/Demerger/445, 466, 481, Others), MGT-14 (Others) and GNL-4 are allowed to be filed if the company status is under liquidation.
3. Can Deactivated director activated through this scheme? **Ans:** Yes. He can file DIR-3 KYC e-form/ Web form and INC- 22A (Active) as applicable without any payment of fee provided such director is not disqualified under section 164 of the CA2013.
4. Should the returns be filed for the subsidiary where its Holding is currently under liquidation? But the returns relate to the period where the holding had its normal business activities. How to deal this? **Ans:** Yes.
5. Under this scheme whether AoC-4 for a year can be filed, without filling the AOC-4 for the previous year? **Ans:** Yes, you can file without filing for the previous year. There is no restriction, however it is expected that complete and continuous year filing (without skipping intermediate year) will be good corporate governance.
6. Whether any separate AOC 4 and MGT 7 has to be filed for companies under liquidation? **Ans:** There is no separate AR/BS for companies under Liquidation.

7. Whether CFSS scheme is applicable for the companies which have been automatically struck off due to non-filing of annual documents i.e. Annual Returns?

Ans: The struck off companies have to approach the NCLT for reviving their companies first and a copy order of NCLT approving for such revival under section 252 of the CA 2013 to be filed in Form NO.INC-28. Later on they can take the benefit of this scheme.

8. Applicability of CFSS to a foreign company having Project Office in India. (FC Forms to be filed in ROC).

Ans: Yes. CFSS is applicable for foreign companies.

9. For filing MGT 14, AOC-4 for the past year, do we need to apply for condonation also?

Ans: For filing MGT-14 beyond 300 days, condonation is required. However, AoC-4 for the past year(s) can be filed without any condonation.

10. If the Company is in Active mode, but the directors' DINs are deactivated, what should we do?

Ans: Deactivated DINs for not filing the DIR-3 KYC can be activated by filing it now without the fee of INR 5000 during the currency of the CFSS, 2020 provided such director is not disqualified under section 164 of the CA 2013

11. In our case, company was struck off and as a result both directors were disqualified. Now Company was Revived by NCLT and Revival order has beenpassed.
How to remove disqualification of director u/s164(2)(a)?

Ans: The removal of disqualification is not automatic and the same cannot be cured under the provisions of CA, 2013.

INC 28 is not filed till date (as it is required to be filed within 30Days).

Ans: INC-28 can be filed by an authorised signatory who can be added from backend by the jurisdictional RoC based on evidence produced by the company.

(iii) How to do Annual filing of Past year?

Ans: Past year filings can be made as per applicable norms.

12. Can a company also file its old annual returns for 3 to 4 years without late fees?

Ans: Yes, without additional fee,

13. The company is an inactive company. The company has defaulted in filing form SH-7. It now wants to file form SH-7 under CFSS 2020 scheme and simultaneously make application for striking off the name by filing form STK 2.

Ans: SH-7 can be filed with applicable fee and additional fee. The additional fee waiver is not applicable for SH-7 and charge related forms.

14. Please let us know the List of eForms eligible for additional fee waiver during the currency of the CFSS, 2020 and LLP Modified Settlement Scheme, 2020?

Ans: List of forms (CA56/CA13/LLP) eligible for additional fee waiver is available at the link:
http://www.mca.gov.in/Ministry/pdf/CFSS2020_02042020.pdf

15. A Company was not able to file Satisfaction of charge in CHG 4 as the DIN of the director was deactivated. Now with this scheme can the company first update its returns, get the din activated and then file CHG 4 under this scheme even though there is a delay of 1 year?

Ans: Deactivated DIN can be reactivated by filing DIR-3 KYC now without payment of INR 5000. Filing of CHG-4 towards satisfaction of charges beyond 300 days is NOT permissible, however for delay in filing satisfaction of charges, form no.CHG-8 may be filed and the power for such Condonation of delay (satisfaction) is vested with Regional Director(s)

16. Is CFSS-2020 scheme applicable to subsidiary of a foreign company registered in India and foreign company itself?

Ans: Yes.

17. Can we file STK-2 without filing INC-20A in this scheme? As company has not started its business and even bank account is not opened by company. So want to strike off the name and close company to avoid any defaults and penalties.

Ans: STK-2 can be filed by a company who has not filed INC-20A within 180 days of incorporation. After a period of 180 days of incorporation, filing of form INC-20A is allowed to be filed first. Thereafter, they can file STK-2 if they desire so by following the relevant provisions of the Act relating to Strike off procedure.

18. How to rectify AOC 04 filed with inadvertent errors?

Ans: AoC-4 or any other STP form filed with inadvertent errors can be marked as ‘defective’ by the jurisdictional RoCs based on evidence and formal request. Once the particular STP is marked as defective fresh filing has to be made.

19. A Company already filed MGT-7 but AOC-4 is not yet filed. Can it file AOC-4 now?

Ans: Yes.

20. Where orders have been passed by Hon’ble NCLT to restore the name of the company under section 252/253 subject to filing of all the pending documents and returns and no time limit is given in the order to file pending documents /forms/returns. The company has not yet filed the copy of order of NCLT with ROC. Can company avail this scheme and file all the pending documents without any additional fee?

Ans: Yes, after filing INC-28 with a copy of order passed by NCLT.

21. What about the additional fee already paid by the entities? Is this not a hardship on them who have already paid heavy additional fee in order to abide the compliance?

Ans: The CFSS 2020 and LLP Modified Settlement Scheme 2020 have been notified in view of the COVID- 19 To provide a first of its kind opportunity to both Companies and LLPs to make good any filing related defaults, irrespective of duration of default, and make a fresh start as a fully compliant entity.

22. In the CFSS,2020 please suggest whether it would be applicable to Project office of a company in India having FCRN no.?

Ans: Yes.

23. For filing commencement of business form to newly incorporated companies now additional 180 days is allowed but which companies are allowed such benefit. What is the cut off dates for newly incorporated companies i.e., to companies incorporated from which date this benefit will get passed on?

Ans: All newly incorporated companies are required to file a declaration for Commencement of Business within 180 days of incorporation under section 10A of the Companies Act, 2013. An additional period of180 more days has been allowed for this compliance.(please see circulars issued in March,2020)

24. In the case of a company whose status as per MCA is active (for filing) but whose all directors are disqualified, what is the way out to avail the benefits of the fresh start scheme?

Ans: Disqualification of Directors cannot be cured under the scheme.

25.Cancompanies with paid up capital between 5 crores to 10 crores which did not file Active form since CS was not appointed file the form now since threshold was increased to 10 crores from 5 crores from01.04.2020?

Ans: ACTIVE form can be filed without the fee of INR 10000.

26. What are options available to a company the name of which has been struck off by the ROC but is having business activities for availing this scheme.

Ans: The company has to approach NCLT and get an Order for reviving. Thereafter the company can take the benefit under CFSS.

27. Does the scheme cover default for DIR-3 KYC?

Ans: DIR-3 KYC can be filed without the fee of INR 5000.

28. Does the CFSS 2020 allows refund of the late filing fee and penalty which are already paid on Company fillings made before march 2020?

Ans: No.

29. Whether immunity certificate will be generated automatically once CFSS form is uploaded or it will be subject to approval of concern ROC.

Ans: Subject to examination and approval by the jurisdictional RoC.

30. Whether late fees/additional fees be waived off after filing of Immunity Form i.e. full amount will be paid in advance (while filing of any form out of 76 forms) and refunded back after filing of Immunity Form?

Ans: Additional fees would not be charged in respect of the 76 forms and such forms have already been displayed in MCA-21 portal.

31. Will MCA be refunding the Additional fees received as clients have paid the same while filing the same in ROC during 2019-20?

Ans: Additional fee waiver becomes applicable only during the currency of the scheme.

32. Can a company whose director has been disqualified can use this scheme?

Ans: The CFSS 2020 is applicable for defaulting companies to file the belated document sand does not extend to curing the disqualification of Directors.

33. Additional fee is still showing in enquire fees menu in MCA portal. Whether it needs to be updated in portal? Or it is get updated after filing forms and generating SRN.

Ans: Yes, it gets updated while generating challan.

34. If the director has been disqualified in FY 2016-17 and filling is pending, can still the benefit of the CFSS scheme can be availed by the company (if status of company is still active)?

Ans: CFSS 2020 does not cure the disqualification of Director. If there are no authorized signatories left in the company, the company may approach the jurisdictional RoC with a formal request to add one authorized signatory from backend. Later on the company may file the belated documents under the scheme.

35. Whether the scheme is applicable for companies already struck off by MCA and not voluntarily filed by the company?

Ans: The struck off companies may approach the NCLT for revival. Once the company is revived the belated documents may be filed.

36. Which form to be file earlier CFSS-2020 or belated forms?

Ans: Belated forms have to be filed first. CFSS-2020 would be made available w.e.f 1st October, 2020.

37. Will this scheme be applicable on filing, if due date is falling between period April 2020 to September, 2020?

Ans: Irrespective of the due date additional fee waiver can be availed during the currency of the scheme.

38. Is every company availing this scheme need to file FORM CFSS-2020 before filling the all the belated documents or should we file the documents directly?

Ans: Belated documents have to be filed during the currency of the scheme. If the scheme benefits are availed, such a company has to file the CFSS eform on or after 1st October, 2020 and before 31st March, 2021.

39. Annual Returns as well as Auditor Appointment is not done since April 2015. Can the private limited company avail this scheme?

Ans: All companies can avail the scheme for filing belated documents.

40. If company is under NCLT, and Operations are managed by IP, whether he can opt under this scheme?

Ans: Yes, if the company status is not struck off and if it struck off it can take the benefit after it is revived.

41. Can there be a refund of late fee deposited for forms filed earlier the notification of scheme (forms filed are covered in scheme)?

Ans: No.

42. As under CFSS, CFSS Form needs to be filed between 01st October to 31st March, do we need to file any such form under LLP Modified Settlement Scheme to get immunity?

Ans: No such requirement for LLPs who have availed the benefit under the LLP Modified Settlement Scheme.

43. Is the Form CFSS 2020 currently available in the MCA portal for e-filing? If not, when will the form be made available?

Ans: The form CFSS 2020 would be made available w.e.f 1st October 2020 and till 31st March 2021 for filing purposes.

Disclaimer:

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"Control leads to compliance; autonomy leads to engagement."

— Daniel H. Pink