



January 02, 2018

Info Capsule

MCA INTRODUCED “CONDONATION OF DELAY SCHEME 2018”¹

Ministry of Corporate Affairs, vide its General Circular dated December 29, 2017, has introduced a Scheme namely “Condonation of Delay Scheme 2018” [CODS-2018]. The brief of the Scheme is as below:

Duration of Scheme	Effective from 01.01.2018 to 31.03.2018.
Applicability	Applicable on all defaulting companies (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 Companies Act, 2013). Defaulting company can file its overdue documents which were due for filing till 30.06.2017 in accordance with the provisions of this Scheme.
Procedure	DINs of the disqualified directors de-activated at present, shall be temporarily activated during the validity of scheme period.
Overdue e-filing	<p>This scheme shall not apply to the filing of documents other than the following overdue documents with statutory and additional fees:</p> <ul style="list-style-type: none">i) Form Number 20B/MGT-7- Form for filing Annual return by a company having share capital.ii) Form 21A/MGT-7- Particulars of Annual return for the company not having share capital.iii) 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.iv) Form 66 - Form for submission of Compliance Certificate with the Registrar.v) Form 23B/ADT-1 - Form for intimation for Appointment of Auditors. <p>After filing of documents under Scheme, the Company shall seek condonation of delay by filing form e-form CODS 2018, with a fee of Rs. 30,000 (e-form CODS 2018 will be available for e-filing from 20.02.2018 or other date intimated by MCA)</p> <p>If overdue e-filing and form e-form CODS 2018 not done within the stipulated time prescribed in the Scheme, then DINs of directors shall be deactivated on the expiry of the scheme.</p>

¹ Available at http://mca.gov.in/Ministry/pdf/Generalcircular16_29122017.pdf

Companies name struck-off	Defaulting companies whose names have been removed from the register of companies and which have filed applications for revival under section 252 of the Act up to the date of scheme, the DIN shall be re-activated only upon NCLT order of revival subject to the company having filing of all overdue documents.
Prosecution by ROC	<p>ROC shall withdraw the prosecution pending for all the documents filed in this scheme, 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.</p> <p>At the conclusion of the Scheme, the ROC shall take all necessary actions under the Companies Act, 1.956 / 2013 against the companies who have not availed themselves of this Scheme and continue to be in default in filing the overdue documents.</p>

SUBMISSION OF FINANCIAL INFORMATION TO INFORMATION UTILITIES²

According to Section 215 of Insolvency and Bankruptcy Code (IBC), 2016, a financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, to an information utility (IU) in such form and manner as may be specified by regulations. Chapter V of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, which has come into force with effect from April 1, 2017, has specified the form and manner in which financial creditors are to submit this information to IUs. Further, as per Section 238 of the IBC, 2016 the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

The Insolvency and Bankruptcy Board of India (IBBI) has registered National E-Governance Services Limited (NeSL) as the first IU under the IBBI (IUs) Regulations, 2017 on September 25, 2017.

All financial creditors regulated by RBI are advised to adhere to the relevant provisions of IBC, 2016 and IBBI (IUs) Regulations, 2017 and immediately put in place appropriate systems and procedures to ensure compliance to the provisions of the Code and Regulations.

INSOLVENCY BANKRUPTCY BOARD OF INDIA PUBLISHES SYLLABUS AND OTHER DETAILS OF EDUCATIONAL COURSES AND VALUATION EXAMINATIONS³

The Central Government notified the commencement of section 247 (relating to valuers) of the Companies Act, 2013 with effect from 18th October, 2017. It also notified the Companies (Registered Valuers and Valuation) Rules, 2017 on 18th October, 2017.

Vide a notification dated 23rd October, 2017, the Central Government issued the Companies (Removal of Difficulties) Second Order, 2017 to provide that valuations required under the Companies Act, 2013 shall be undertaken by a person who, having the necessary qualifications and experience, and being a valuer member of a recognized valuer organization, is registered as a valuer with the Authority. Vide another notification on the same date, the Central Government delegated its powers and functions under section 247 of the Companies Act, 2013 to the Insolvency and Bankruptcy Board of India (IBBI) and specified the IBBI as the Authority under the Companies (Registered Valuers and Valuation) Rules, 2017.

² Available at: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11189&Mode=0>

³ Available at: <http://pib.nic.in/PressReleaseDetail.aspx?PRID=1514853>

These notifications require that with effect from 1st April, 2018, for conducting valuations required under the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016, a person is to be registered with the IBBI as a registered valuer. For registering with IBBI, a person must have necessary qualification and experience, has to be enrolled as a valuer member with a Registered Valuer Organisation (RVO), has to complete a recognised educational course conducted by the RVO, and pass valuation examination conducted by IBBI. A person, who is rendering valuation services under the Companies Act, 2013, may continue to do so without a certificate of registration up to March 31, 2018.

A registered valuer may conduct valuations under any other law, if required or permitted under that law or the concerned authority.

In pursuance to the Companies (Registered Valuers and Valuation) Rules, 2017, IBBI, being the Authority, recognised on 27th December, 2017 two RVOs, namely, (a) The Institution of Estate Managers and Appraisers in the Asset Class of Land and Building, and (b) The IOV Registered Valuers Foundation in the Asset Classes of: (i) Land and Building (ii) Plant and Machinery, and (iii) Securities or Financial Assets.

IBBI, being the Authority, in pursuance of the first proviso to rule 5 (1) of the Rules specified the details of educational course for the Asset Class of 'Securities or Financial Assets' on 30th December, 2017. It has published today such details for the Asset Classes of (a) Land and Building, and (b) Plant and Machinery. These courses shall be delivered by the RVOs in not less than 50 hours.

In pursuance of the rule 5 (3) of the Rules, IBBI, being the Authority, published the syllabus, format and frequency of the valuation examination for the Asset Class of 'Securities or Financial Assets' on 30th December, 2017. It has published today such details for the Asset Classes of (a) Land and Building, and (b) Plant and Machinery. A person wishing to be a valuer needs to pass this valuation examination.

The details of educational courses and syllabus of valuation examinations are available on IBBI website www.ibbi.gov.in.

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