

Topic : COMPANIES FRESH START SCHEME, 2020 And LLP MODIFIED SETTLEMENT SCHEME, 2020



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COMPANIES FRESH START SCHEME, 2020

- The Ministry of Corporate Affairs (MCA) issued a Circular on 30-03-2020 to give a chance to all the Companies to complete their pending compliances without payment of additional fees. We can say that it is a chance for all the companies to make a fresh start on a clean slate in Statutory Compliance's under Companies Act, 2013.
- It is a one time opportunity provided by MCA to the companies.



Ministry of
Corporate Affairs

IMPORTANT DEFINITIONS

1. Defaulting Company - means a company defined under The Companies Act, 2013, and which has made a default in filing of any of the documents, statements, returns, etc including annual statutory documents on the MCA – 21 registry.
2. Designated Authority - means the registrar of companies having jurisdiction over the registered office of the company.
3. Inactive Company - means the company which is not carrying on any business or operation or has not made any significant accounting transaction during the last two financial years or the company who has not filed its financial statements and annual returns for the last two financial years.



ENFORCEMENT

- This scheme shall come into force on 1st April, 2020 and shall remain in force till 30th September, 2020.

APPLICABILITY

- Any “DEFAULTING COMPANY” is permitted to file belated documents which were due for filing on any given date.

PAYMENT

- Every “DEFAULTING COMPANY” shall require to pay Normal Fees as prescribed under Companies (Registration Offices and fee) Rules, 2014, and no Additional Fees shall be payable.

Key Benefits of CFSS, 2020 :

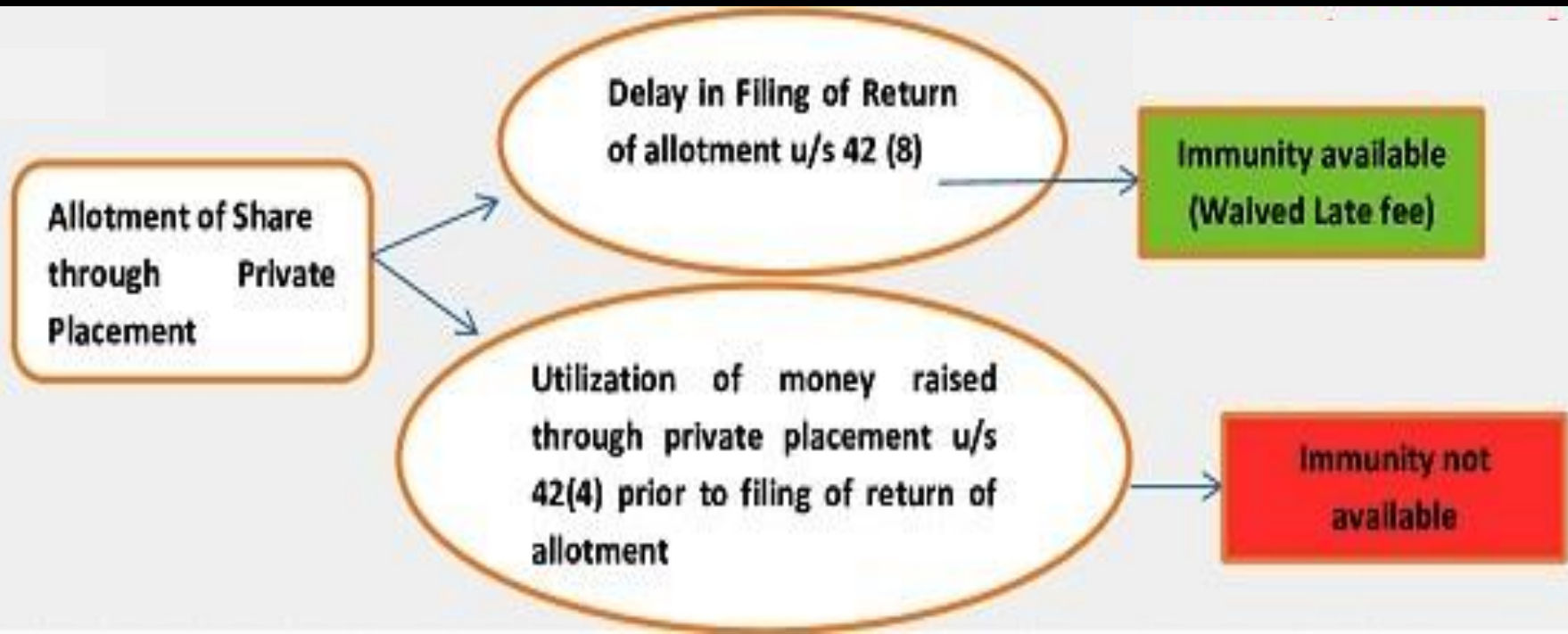
- No additional fees is required to be paid, in relevance of any period.
- Immunity from the prosecution.
- No penalty on account of delay in filings.



Immunity from Prosecution or Proceedings:

- It shall be provided only to the extent such Prosecution or Proceedings for imposing penalty under the Act pertain to any delay associated with the filings of belated documents.

Example



Application for issue of Immunity:

- The application for seeking the immunity by the government in relation to belated documents needs to be filed electronically in the **Form CFSS-2020**. No fees shall be charged for filing application of immunity with the government.
- This application can be filed by the company after closure of the scheme and after the documents for which immunity is being asked are filed by the company **or** taken on record **or** approved by the designated authority as the case may be. It may be noted that under any circumstances, The application for seeking immunity can't be filed after expiry of 6 months from the closure of the scheme.

Circumstances where Immunity shall not be provided:

- In cases where the matter is already pending before the court of Law.
- In cases where the management disputes of the company are pending before the court of law.
- Also, No immunity shall be provided in case **order for conviction** or **penalty** has been passed by adjudicating authority or by court under the Act and **no appeal** against such order has been preferred against such order of court or adjudicating authority as the case may be, before this scheme has come into force i.e. **1st April, 2020**.

Order granting Immunity:

After the Form- CFSS 2020 has been filed by the company online, an immunity certificate shall be issued by the designated authority under this scheme after the authority is satisfied with the claim and declaration made in the Form: CFSS-2020.



Effect of getting Immunity:

The concerned Designated authority shall withdraw all the prosecutions pending before the concerned authorities. But the proceedings that shall need to be withdrawn should be those relating to the default for submission of the documents or statements and not for any other default for which immunity is not allowed under the scheme. So, accordingly immunity shall be provided from the designated authority without any further action pending on their part.

Special Provision for Inactive Companies under the Scheme:

This fresh start scheme also provides major benefit to defaulter inactive companies. Every Defaulting inactive company can along with filing of documents under this scheme, can also apply for any of the following two options as per their choice:



- Apply to get themselves declared as **Dormant Company under section 455** of the Act. This option can be availed by filing the **Form MSC-1** electronically by paying a nominal as prescribed for this form, or
- Apply for striking off their names from the register of companies. This option can be availed by electronically filing the **Form STK-2** along with deposit of nominal fees prescribed for this form.

Non-Applicability of CFSS, 2020 in the following cases:

1. Final notice for striking off the name of the company under section 248 of the companies act, 2013 already issued by the ROCs;
2. The company made an application for striking off the name of the company from ROCs;
3. Companies amalgamated under the scheme of compromise & arrangement;
4. The company applied for dormant status under section 455 of the companies act, 2013 before the scheme introduction
5. Vanishing Companies;

Which forms are not covered under this scheme?

1. E-form SH-7 (Increase in the Authorized Capital)
2. E-form CHG-1 (Application for registration of creation or modification [other than those related to debentures] of charges)
3. E-form CHG-4 (Particulars of satisfaction of charges)
4. E-form CHG-8 (Application to Central Government for extension of time for filing particulars of registration of creation/ modification/ satisfaction of charge OR for rectification of omission or misstatement of any particular in respect of creation/ modification/ satisfaction of charge)
5. E-form CHG-9 (Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures)

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. Can Deactivated director activated through this scheme?

Ans: Yes. He can file DIR-3 KYC eform/Web form and INC-22A (Active) as applicable without any payment of fee provided such director is not disqualified under section 164 of the CA 2013.

3. 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.

4. 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.

5. 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 been passed.

(i) How to remove disqualification of director u/s 164(2)(a)?

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

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

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.

6. Can LLP with Under Strike off or 'Defunct' status file form 8 and form 11 for past 3-4 years? (as per the scheme or even in general)?

Ans: No.

7. 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.

8. Can companies 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 from 01.04.2020?

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

9. 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.

10. 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.

11. 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.


12. Form 8 is not allowing prefill for an LLP which is under defunct status. How should we avail the scheme for such LLP? Is the scheme available? Will new forms be made available then?

Ans: An LLP under struck off(Defunct) status cannot avail the benefit of LLP Modified Settlement Scheme

Special Measures under Companies Act, 2013 (CA-2013) and Limited Liability Partnership Act, 2008 in view of COVID-19 outbreak as per circular dated 24th March,2020:

- 1. No additional fees shall be charged for late filing during a moratorium period from 01st April to 30th September 2020, as read in CFSS, 2020 and LLP Modified Settlement Scheme, 2020.**
- 2. Mandatory requirement of holding Board meetings of the companies as provided in section 173 of the Companies Act, 2013 (CA13) (120 days) stands extended by a period of 60 days till next two quarters i.e., till 30th September. Accordingly, as a one time relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA-13.**
- 3. The Companies (Auditor's Report) Order,2020 shall be made applicable from the financial year 2020-2021 instead of being applicable from the financial year 2019-2020 notified earlier.**

4. As per Para VII (1) of Schedule IV to the CA-13, Independent Directors (IDs) are required to hold at least one meeting without the attendance of Non-independent directors and members of management. For the financial year 2019-20, if the IDs of a company have not been able to hold such a meeting, the same shall not be viewed as a violation.
5. Requirement under rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th April 2020, may be complied with till 30th June 2020.

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6. Newly incorporated companies are required to file a declaration for Commencement of Business within 180 days of incorporation under section 10A of the CA-13. An additional period of 180 more days is allowed for this compliance.
 7. Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, under Section 149 of the CA-13 shall not be treated as a non-compliance for the financial year 2019-20.

LLP Modified Settlement Scheme, 2020



In continuation of the Ministry's General Circular No. 06/2020 dated 4th march 2020, it has brought specific modification with the existing LLP SETTLEMENT SCHEME, 2020, with Circular No. 13/2020 dated March 30, 2020.

Purpose of this Scheme

To facilitate the LLP's registered in India to make a fresh start.

One time opportunity for the defaulting LLP's and enables them to file belated returns with normal ROC fees applicable.

Meaning of “Defaulting LLP”

It means LLP registered under the Limited Liability Partnership Act, 2008 which has made default in filing of documents within due date(s) specified under the LLP Act, 2008 and rules made thereunder;

Comparative Analysis of LLP Modified Settlement Scheme, 2020 and LLP Settlement Scheme, 2020:

LLP Modified Settlement Scheme, 2020

- Time Period for the Scheme is April 1, 2020, to September 30, 2020.
- Applicability- Any Defaulting LLPs can file belated documents/specified forms, which were due for filing up to August 31, 2020.
- No additional fees payable, pay only normal fees.
- Applicable Forms - Any form, which is required to be file under the LLP Act,2008.

LLP Settlement Scheme, 2020:

- Time Period for the Scheme is March 16, 2020, to June 13, 2020
- Applicability- Any Defaulting LLPs can file belated documents/specified forms, which were due for filing up to October 31, 2019, by the provisions under this Scheme
- Normal fees, and additionally Rs fee payable 10/- per day of delay, subject with Maximum of Rs. 5000/- per document.
- Applicable Forms – Form-3, Form-4, Form-8, Form-11

Consequences of not availing LLP Modified Settlement Scheme, 2020

- Normal fee would be payable on the forms.
- An additional fee of Rs. 100 per day of default will be applicable.
- Action for Strike Off by the Registrar will be given.
- Prosecution for the Partners & Designated Partners.

Immunity from prosecution with respect of Documents filed under this scheme:

The Defaulting LLPs which have submitted belated documents/forms till September 30, 2020, as specified under this scheme and have made good their defaults, such LLPs will not be subjected to prosecution by the Registrar for such defaults.



THANK
YOU