TheCompaniesAct2013

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ABOUT THE E-NEWSLETTER

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the December month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

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ARTICLE

The Ministry of Corporate Affairs (MCA) introduced a fresh scheme named **Companies Fresh Start Scheme, 2020 (CFSS)** in the favor of businesses in India vide circular no. 12/2020 dated March 3, 2020 under Section 460 of the Companies Act, 2013 ("**Act**") read with Section 403.

Which companies can take benefit of the Scheme?

Any company which has defaulted in filing any document, return, statement, etc. with MCA21 registry is eligible ("Eligible Company") to participate in the Scheme.

Non-Applicability of the Scheme

This scheme shall not apply:

- To Companies against which action for final notice for striking-off the name has been initiated under Section 248 of the Act; (corresponding to section 560 of the CA,1956)
- To Companies which have already filed application for striking-off name under Section 248 of the Act;
- To Companies which have been amalgamated under scheme of arrangement or compromise;
- To Companies which have filed application for obtaining status of 'dormant company' under section 455 of the Act;
- To Vanishing companies;
- Where any increase in authorized capital is involved (Form SH-7) and also charge related documents (CHG-1, CHG-4, CHG-8 & CHG-9) Companies

What is the Scheme?

Any Eligible Company can file any form, statement or return etc., which was required to be filed under the Act but the Company has defaulted in filing the said form, return etc. Such belated forms can be filed on payment of normal fees as prescribed under the Companies (Registration Offices and Fees) Rules, 2014. No additional fee shall be payable. Thus, filing related defaults can be made good irrespective of duration of default.

What is the duration of the Scheme?

Vide circular no. 12 the duration of the scheme was April 01, 2020 to September 30, 2020.

In the prolongation of the Ministry's General Circular No. 12/2020 dated 30.03.2020, with the context of the disruption affected due to COVID-19, and after pending examinations it is decided to extend the scheme till 31st December 2020. The other provisions in the circular will not be changed. Read General Circular No 30/2020

Here are the Provisions under CFSS 2020:

1. for the Defaulting Firms:

- Such companies will be obliged to pay the nominal fees that are prescribed by the Companies Act 2014 for all the filings on MCA 21. No surcharges.
- Exemption from prosecution and proceedings related to penalties only if the penalty is applicable to the delayed filing of returns. No other case is covered.
- In case there is any statutory appeal filed by the company related to any notice, order or complaint issued regarding delayed compliances then:

(A) The company must withdraw the appeal before enrolling itself under the CFSS 2020.

(B) While applying for the registration under CFSS, the concerned company must furnish the copy of appeal withdrawal along with the application.

- Any order, notice or compliant has been passed by the court by no appeal in response has been filed.

(A) In such a case, the company is allowed the time period of 120 days to file the appeal.

(B) Until then, no action will be taken against the non-compliant company (if it is related to delay in filing of returns).

- A company can file CFSS-2020 to avail of the benefits of the scheme:

(a) The company will be immune until 6 months from the date of closure of CFSS 2020.

(b) No fees are charged for filing Form CFSS-2020.

(c) Immunity certificates will be granted to companies that have their registrations under the scheme.

- Immunity will be not given to the companies if:

(a) An appeal is pending for the company.

(b) If any disputes (related to the company) are pending with the court.

If any order is passed by the court is not replied by the company by the way of an appeal.

- For DIN holders, the due date for filing DIR-3/DIR-3KYC has been extended by MCA. All the directors of the companies (DIN holders) can activate their DIN by filing the form between 1 April 2020 to 31st

December 2020, filings after the due date will attract a fine of Rs. 5000.

2. For the Non-Operative Firms:

The inactive or defaulting firms can also apply for CFSS 2020 and file their due compliance without any hassle. Apart from that, they can do below-mentioned tasks:

- Apply for Dormant Status u/s 455 of the Companies Act, 2013 by filing MSC-1 along with the prescribed charges.
- Apply for excluding the name of the company from the Register of Companies (ROC).
- Due dates of filing e-form ACTIVE extended till 31st December 2020. The firms liable must file the form on or before the due date else there is a fine of Rs. 10,000 per filing after the due date.

Modifications Introduced Under LLP Settlement Scheme 2020

- LLP Settlement Scheme 2020 is valid only from 1 April 2020 to 30 September 2020.
- For defaulting LLPs, the due date for filing all the belated documents is 31 August 2020.
- There are no additional fees other than the normal application fees for filing.
- There will be no prosecution by Registrar against the defaulting firms that have filed all the belated compliances on or before 30 September 2020.
- The norms are non-applicable for LLPs that have nominated their company name to be removed from the Registrar of Companies as per LLP Rules 2009.

Extension of LLP Settlement Scheme 2020

Vide Circular No. 31/2020 dated 28/09/2020

In continuation to this Ministry's General Circular No.13/2020 dated 30.03.2020, in view of large scale disruption caused by the COVID-19 pandemic and after due examination, it has been decided to extend aforesaid scheme till 31st December, 2020. All other requirements provided in the said circular shall remain unchanged.

Vide Circular No. 37/2020 dated 09/11/2020

In continuation to this Ministry's General Circular No. 13/2020 dated 30.03.2020 and in the General Circular No. 31/2020 dated 28.09.2020 the scheme was extended till 31st December 2020, in view of large scale disruption caused by the COVID-19 pandemic and after due examination, it has been decided to extend the date on applicability to defaulting LLP and therefore, in serial number 3, para 8A, sub-para (iii) of the said circular dated 30.03.2020, belated documents due for filing till 30th November 2020 shall be substituted.

All other requirements provided in the said circulars shall remain unchanged.

If a statement of account and solvency for the financial year 2019-2020 has been signed beyond the period of six months from the end of financial year but not later than 30th November, 2020, the same shall not be deemed as non-compliance.

FAQs

1.) Who can avail this scheme?

Any Company which has failed to file any mandatory form with ROC may avail this scheme.

2.) Can "officer in default' avail this scheme as well?

No, the scheme can be availed by defaulting Companies only. The officer in default CANNOT avail the scheme.

3.) What was the need for introduction of CFSS, 2020?

Scheme is introduced with the motive of reducing compliance burden. The aim is to provide defaulting companies a chance to make their compliances good.

4.) What is Inactive Company?

Explanation (i) to Section 455(1) of the Act defines the term "Inactive Company" as "Inactive Company" means a company which has

- not been carrying on any business or operation, OR
- has not made any significant accounting transaction during the last two financial years, OR
- has not filed financial statements and annual returns during the last two financial years"

5.) Who do you mean by Defaulting companies?

Defaulting Company means a Company defined under Companies Act, 2013 and which has made a default in filling of:

– Any of Documents,

– Any of Statement,

– Any of Return etc.

– Including Annual Statutory Document

6.) How will defaulting Company be benefitted if they files the pending forms during the currency of the scheme?

They will be able to make their compliances good and there will be no prosecution/ penalty for the Companies which file their pending forms till 31st December, 2020 provided such prosecution/ penalty is associated with the filing related default.

No immunity is available for any default other than filing related default.

7.) What forms which can be filed under the Companies Fresh Start Scheme, 2020?

The forms which are subject to additional fee under section 403 of **Companies Act, 2013** are eligible for filing under CFSS, 2020 and are divided into

Annual Based

♦ Annual Return- MGT-7

♦ Financial statement- AOC-4

Event Based

♦ Other forms required to be file with Roc Like

– PAS-3

– MGT-14

– ADT-1

– Any other form

Except two forms.

– SH-7- Increase in Authorized

– Charge related form (CHG-1, CHG-4, CHG-8 or CHG-9) Capital

8.) What is the Time limit upto which I can make pending compliances complete?

The Scheme came in to force w.e.f 01.04.2020 and was in force till 31.12.2020.

9.) Is this scheme eligible for Inactive Companies?

This scheme benefitted Defaulting companies but on the same time this scheme, also encouraged Inactive companies to start fresh by filing all their pending forms at Normal Fee by:

(i) either to apply for voluntary strike off by filing e-form STK-2; OR

(ii) apply for the status of Dormant Company by filing e-form MSC-1.

10.) What are the following cases on which Fresh Start Scheme, 2020 (CFSS-2020) shall not apply?

This scheme shall not apply in the following cases are:-

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

11.) What do you mean by Vanishing Company?

A company would be deemed to be a vanishing company, if it is found to have:

a) Failed to file returns with Registrar of Companies (ROC) for a period of two years;

b) *Failed to file returns with Stock Exchange (SE) for a period of two years (if it continues to be a listed company);

c) It is not maintaining its registered office of the company at the address notified with the Registrar of Companies/ Stock Exchange; and

d) None of its Directors are traceable.

12.) If we want to avail the Scheme, then what will be the procedure?

Procedure to avail the Scheme will be as follows:

- You have to do is file all your pending documents and forms before 31st of December, 2020.
- Yes there is an E-form CFSS – 2020, which you need to file within the six months of the closure of the said scheme.

13.) Is there any application need to be file before filing such forms?

No, we do not need to file any **application before filing such forms**. However on completion of scheme, the company shall file e-form CFSS-2020 (yet to be deployed) with no fee and obtain immunity certificate.

14.) Can the benefit be taken by an Active –non compliant company i.e company which has not filed INC 22-A?

As per the scheme, filing of Active form is also allowed thus company is required to file Active forms without any additional fees and then proceed for further filings.

15.) Can the benefit be availed by the directors for updating / filing the KYC documents?

Relaxation is provided under CFSS scheme to file DIR-3KYC/DIR-3KYC-Web within the tenure of the Scheme without filing of any additional fees. Once the Din is activated, rest of the pending forms can be filed.

16.) What is the General Circular number of the Scheme applicable for Companies and LLPs?

The Scheme has been introduced by means of following Circulars of MCA:

1. **General Circular No. 11/2020 dated 24thMarch, 2020;**

2. **General Circular No. 12/2020 dated 30thMarch, 2020.**

17.) If any company has recently filed an application for striking off my company's name, will it be able to get the benefits of the said scheme?

No, it comes under the Exception list provided by Ministry. Thus, won't be able to obtain benefits of the scheme.

18.) What about the companies where the order is issued for belated filing of returns?

In the cases, wherein the penalties are imposed under the Act and the company has not further appealed to higher authorities and such period of appeal lies between 1st March 2020 to 31st May 2020, a period of additional 120 days be allowed for filing of appeal from last date as may be specified under the order.

Further, such companies can also avail to withdraw the appeal, if any filed and avail benefits of the scheme.

19.) What is the benefit provided in the Scheme for a defaulting inactive company?

A defaulting inactive company can apply for either of the following:

1. to become a dormant company by filing e-Form MSC-1; or

2. to get its name struck off by filing e-form STK -2Had it not been for the CFSS, an inactive company cannot for itself file for strike off

20.) Does this CFSS, 2020 scheme waive off all kinds of prosecution/ penalty over the Company?

This CFSS, 2020 scheme does not provide Immunity in following matters:

(i). Matters where appeal is pending before any Court;

(ii). Where any management dispute is pending before the Court or NCLT;

(iii). Where an order of conviction has been issued by the Court & no appeal preferred against such order as on 01st April, 2020;

(iv). Where an order imposing penalty has been made by the Adjudicating Authority & no appeal preferred against such order as on 01st April, 2020;

21.) If any company has been inactive since the last 2 years, can it apply for Strike Off?

It is advisable to apply for this scheme and then apply for Dormant status or Strike off your company without paying any additional fees.

22.) Do I need to pay an additional fee for the late filings, if I want to file my pending forms before the 31st of December, 2020?

No, you do not need to pay any additional fees if you take the benefit under this scheme. You will have to pay the normal fees only. However, you have to file the E-Form CFSS- 2020 for availing the benefits under this scheme.

23.) What is Effect of Company Law Fresh Start Scheme, 2020?

Effect of the Scheme will be as follows:

a) No Need to pay any additional fees on any return of Company during Scheme.

b) Authority shall provide immunity certificate to Company.

c) Company shall withdrawal of appeal against any prosecution launched.

d) ROC shall withdrawal all the prosecution pending regarding such forms/ returns.

e) ROC shall withdrawal the proceedings of adjudication of penalties u/s 454.

24.) Can companies which are struck off and which appeal is pending before the NCLT will avail this CFSS, 2020 scheme?

Struck off company has to revive itself during the tenure of scheme, i.e. upto 31.12.2020 only then possible to avail benefits of this scheme else only Active Companies are allowed to avail benefits of such Scheme.

25.) Is the Scheme available to Nidhi companies?

Yes, Active Nidhi companies can avail the benefit of this Scheme.

26.) If a company increased its share capital but forgot to file the Form SH 7. Can it avail benefit of filing now?

No, it is specifically stipulated in the scheme that, this scheme will not be available in case of filing of form SH 7 i.e. for increase in share capital. Hence, you will have to file the form with additional fees as applicable.

27.) A company is prosecuted for non-filing of Form AOC 4 and MGT 7, will it be immune from being prosecuted under this scheme?

Yes, if you file your form AOC 4 and MGT 7 before the 31st of December, 2020 and file to form CFSS- 2020, you will get immunity from being prosecuted.

28.) A company was willing to apply for striking off it's name due to the burden of penalties for non-filing of necessary documents, is there any way I can take the benefit of this scheme?

Yes, a company now may file all the pending forms and documents without any penalties and additional fees under CFSS 2020. After that you may either continue with your company or strike off your company without any kind of additional fees.

29.) Can ROC withhold Immunity Certificate even after filing Form CFSS-2020?

It will be the duty of Concerned ROC to provide Immunity certificate to the company once Form CFSS-2020 will be filed on completion of all pending compliances.

30.) What are the consequences if the Company doesn't avail the CFSS, 2020 scheme?

The consequences faced by company are as follows:

1. Normal fee payable on the forms;

2. Additional Fee which can go in Lakhs;

3. Action for Strike off by the Registrar;

4. Prosecution/ Heavy Penalty for the Directors & other Officers in default.

31.) Is this scheme eligible on Foreign Companies?

The word used in the Circular is Company and Company is defined under section 2(20) of Companies Act, 2013 and excludes Foreign company. Thus scheme is not valid on Foreign Companies.

CIRCULARS

1. General Circular No. 38/2020 dated 01.12.2020

Subject:

Relaxation of additional fees and extensions of last date of filing of CRA-4 (form for filing of cost audit report) for FY 2019-20 under the Companies Act 2013-reg.

In continuation to the Ministry's General Circular No. 29/2020 dated 10.09.2020, in view of large scale disruption caused by the COVID-19 pandemic and after due examination of the representative received from various stakeholders, it has been decided to substitute the word and figures "30th November, 2020" with the word and figures "31st December, 2020" in the said circular.

The other requirements as mentioned in the said General Circular shall remain unchanged.

2. General Circular No. 39/2020 dated 31.12.2020

Subject:

Relaxation on passing of ordinary and special resolution by companies under the Companies Act, 2013 read with rules made thereunder on account of COVID-19 Extension of time-reg.

In continuation to this Ministry's General Circulars No.14/2020 dated 8th April, 2020, No.17/2020 dated 13th April, 2020, No.22/2020 dated 15.06.2020 and No.33/2020 dated 28.09.2020 and after due examination, it has been decided to allow companies to conduct their EGMs through VC or OAVM or transact items through postal ballot in accordance with the framework provided in the aforesaid Circulars upto 30th June, 2021. All other requirements provided in the said Circulars shall remain unchanged.

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- **The Companies (Share Capital and Debentures)Second Amendment Rules, 2020**
- **The Companies (Incorporation) Third Amendment Rules, 2020**
- **The Companies (Appointment and Qualification of Directors) 5th Amendment Rules, 2020**
- **The Companies (Compromise, Arrangements and Amalgamations) Second Amendment Rules, 2020**
- **The Companies (Prospect and Allotment of Securities) Rules, 2020**

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