

L&S UPDATE

An e-update to clients from Lakshmikumar & Sridharan

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CORPORATE

Companies Fresh Start Scheme, 2020



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exceeding expectations
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Upon representations by various stakeholders and in the interest of all companies, the Ministry of Corporate Affairs (“**MCA**”) recently came out with the Companies Fresh Start Scheme, 2020. The purpose of the said scheme is to condone the delay in filing of documents and provide a one-time waiver to companies from prosecution and imposition of additional fee, in order to enable such companies to file all their documents.



The MCA, *vide* a circular (No. 12/2020) dated March 30, 2020 introduced the Companies Fresh Start Scheme, 2020 ("**CFS Scheme**"). Under the CFS Scheme, an opportunity has been given to defaulting companies to file belated documents required to be filed on the MCA-21 registry and such delay made by the defaulting companies will be condoned. Additional fees will not be charged for late filing and only normal fees for filing of documents in the MCA-21 registry will be payable as per the provisions of Section 403 of the Companies Act, 2013 ("**Companies Act**") read with Companies (Registration Offices and Fees) Rules, 2014 and Section 460 of the Companies Act.

Key highlights of the CFS Scheme are:

1. **Time period:** The CFS Scheme will come into force on April 1, 2020 and will remain in force till September 30, 2020.
2. **Immunity:** Immunity has been provided to companies in relation to prosecution or proceedings for imposing an additional penalty in relation to delay in filing of belated documents. However, the CFS Scheme does not provide immunity for any other consequential proceedings including proceedings involving the interest shareholders or any other person *qua* the company or its directors or key managerial personnel etc.

Immunity will not be granted in matters of any appeal pending before any court or in case of management of disputes of the company pending before any court or tribunal. Moreover, immunity will not be granted in the event any court has ordered conviction, or any adjudicating body has imposed penalty and no appeal has been preferred against such orders before the CFS Scheme came into force.

3. **Immunity certificate:** An application is required to be filed in Form CFSS-2020 in order to seek immunity with respect to the belated documents filed under the CFS Scheme. Such application will be required to be made after closure of the CFS Scheme and the documents are taken on record but before the expiry of 6 (six) months from the date of closure of CFS Scheme. On the basis of declaration made in Form CCFS-2020 with respect to the documents filed under the CFS Scheme, immunity certificate will be issued by the designated authority.
4. **Withdrawal of appeal:** In the event the defaulting company has filed any appeal against any notice issued or complaint filed or order passed by a court or any adjudicating authority, then the applicant is required to withdraw the appeal and furnish proof of such withdrawal before applying for the immunity certificate.

5. **Effect of Immunity:** After granting immunity, the designated authority will be required to withdraw any pending prosecutions before the concerned court(s) and any pending proceedings of adjudication of penalties under Section 454 of the Companies Act except for matters wherein a court has ordered conviction or an adjudicating body has imposed penalty and no appeal has been preferred against such orders before the CFS Scheme came into force.
6. **Special measures:** In cases wherein due to delay in filing of documents in the MCA-21 registry, penalties were imposed but no appeal was preferred, the same will be dealt with in a manner provided under the CFS Scheme. In cases where the last date for filing of appeal against the order of adjudicating authority falls between March 31, 2020 to May 31, 2020, an additional period of 120 (one hundred and twenty) days will be allowed *w.e.f* the last date of filing of appeal. During such additional period, any prosecution for non-compliance of order of the adjudicating authority pertaining to delay in filing of documents in the MCA-21 registry will not be initiated against such companies or their officers.
7. **Inactive companies:** Any defaulting inactive company can, while filing documents under the CFS Scheme, either apply to get itself declared as a dormant company under Section 445 of the Companies Act by filing e-form MSC-1 or apply for striking off its name by filing e-form STK-2.
8. **Non-applicability:** The CFS Scheme will not apply to the following cases:
 - i. companies against which action of striking off has been initiated by the designated authority;
 - ii. where application has been filed by the company to initiate the action of striking off of the company from the register of the company;
 - iii. companies which have amalgamated under a scheme of amalgamation or compromise under the Companies Act;



- iv. where applications have been filed for achieving the dormant status under Section 455 of the Companies Act, before the issuance of the CFS Scheme;
- v. in case of vanishing companies and;
- vi. in case of increase in authorised share capital (Form SH-7) or charge related documents (Form CHG-1, Form CHG-4, Form CHG-8 and Form CHG-9).

9. **Measures on conclusion of the CFS Scheme:** Once the CFS Scheme is concluded, the designated authority has the power to take necessary action under the Companies Act against the companies that have not availed of the CFS Scheme and are in default in respect of any filings to be made in a timely manner.



IMPLICATIONS FOR COMPANIES

In this current climate of business uncertainty and hardship, such measures introduced provide for much needed relaxation and are a welcome move. Such a move by the MCA will definitely ease the compliance burden on such entities and ensure that the statutory filings are completed in entirety.

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