

Companies Fresh Start Scheme, 2020

A chance to fall in line for incorporated entities in India

In the wake of COVID 19, the Ministry of Corporate Affairs ('MCA') had *vide* its General Circular No. 11/2020 dated March 24, 2020, announced that no additional fees shall be charged for any belated filing being done by any Company during the moratorium period commencing from April 01, 2020 until September 30, 2020.

In continuation of its afore-mentioned General Circular No. 11/2020 dated March 24, 2020, the MCA *vide* its General Circular No. 12/2020 dated March 30, 2020, introduced the Companies Fresh Start Scheme, 2020 ('CFSS-2020').

The rationale behind the introduction of the said scheme *viz.* CFSS-2020, is to offer a chance to all non-compliant Companies to make a 'fresh start' by becoming compliant by successfully filing all the mandated documents/forms in accordance with the provisions of the Companies Act, 2013 read with the Rules framed thereunder, and to reduce the overall compliance and/or financial burden of all the Companies, in general, in light of the present public health emergency situation prevailing in India.

The salient features of the CFSS-2020 are being outlined hereunder:

1) Commencement date and Applicability period:

The said Scheme has come in force from April 01, 2020 and shall remain in force until September 30, 2020.

2) Important definitions under the Scheme:

⇒ "*Defaulting Company*" means a Company defined under the Companies Act, 2013, and which has made a default in filing of any of the documents, statement, returns, etc. including annual statutory documents *viz.* AOC-4 & MGT-7 on the MCA-21 registry.

⇒ "*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.

3) Applicability of the Scheme:

The said Scheme is applicable to any and every Defaulting Company.

4) Reasons for opting the Scheme:

The various reasons for opting the said Scheme may be summarized as follows:

- ⇒ It enables the Defaulting Companies to file all their pending forms (*a complete list of the 76 e-forms which are allowed to be filed under the said Scheme, may be accessed from the MCA website*) that are required to be filed with the jurisdictional Registrar of Companies ('**ROC**') by paying normal fees (without levy of any additional fees/fine/penalty) as prescribed under the Companies (Registration Offices and Fees) Rules, 2014.
- ⇒ It grants immunity and protection against the launch of any proceedings or prosecution for imposing penalty pertaining to any delay associated with the filing of any belated form/document.
- ⇒ It ensures that once an immunity is granted to any Company under and pursuant to the provisions of the said Scheme, the jurisdictional ROC shall withdraw all the proceedings pertaining to the adjudication of penalties under Section 454 of the Companies Act, 2013.

5) Procedure to be followed for registering under the Scheme:

- ⇒ The Defaulting Companies shall file their belated documents/forms in the respective prescribed e-Forms by paying the normal statutory filing fee without any additional fee, until the date of closure of the said Scheme.
- ⇒ The Defaulting Companies shall electronically file the Form CFSS-2020 after having duly filed all the requisite and applicable belated documents/forms and the same being taken on record or approved by the jurisdictional ROC and after closure

of the said Scheme but not after the expiry of a period of six (6) months from the date of closure of the said Scheme.

⇒ Basis the particulars provided and the declarations made in the Form CFSS-2020, an Immunity Certificate shall be issued by the jurisdictional ROC in respect of all the belated documents/forms filed under this Scheme.

6) Non-applicability of the Scheme in certain cases:

The Scheme shall not be applicable in the following cases/circumstances:

- ⇒ Where an action for striking-off has already been initiated by the ROC or Form STK-2 has already been filed by a Company for striking off such Company's name from the Register of Companies.
- ⇒ Companies which have amalgamated.
- ⇒ Companies which have already filed an application for obtaining dormant status.
- ⇒ Vanishing Companies.
- ⇒ Where any increase in authorized capital is involved (Form SH-7) and in case of all charge related documents viz. CHG-1, CHG-4, CHG-8 and CHG-9.
- ⇒ In the matter of any appeal pending before the court of law.
- ⇒ In case of management disputes of the company pending before any court of law or tribunal.
- ⇒ In case any court has ordered conviction in any matter or an order imposing penalty has been passed by an adjudicating authority under the Companies Act, 2013 and no appeal has been preferred against such orders, before the said Scheme has come into force.

7) Benefits for Inactive Companies:

The Companies which are inactive, while filing belated documents/forms under the said Scheme, can simultaneously file for either of the following:

- ⇒ getting themselves declared as Dormant Companies under Section 455 of the Companies Act, 2013 by filing Form MSC-1; or
- ⇒ getting their names struck off from the Register of Companies by filing Form STK-2.

8) Concluding remarks:

To conclude it may be stated that CFSS-2020 has been introduced by the MCA, in light of the present public health emergency situation prevailing in the nation, with an object of offering a chance to all Defaulting/Inactive Companies to make a 'fresh start' by becoming compliant and also reducing the overall compliance and/or financial burden of all the Companies, in general.
