

LAW & POLICY UPDATE

CORPORATE & COMMERCIAL



Fresh Start Scheme to support businesses

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In order to support local businesses during the economic disruption caused due to Covid-19, the Government of India, Ministry of Corporate Affairs on March 30, 2020 introduced Companies Fresh Start Scheme, 2020 (**CFSS 2020**). This scheme provides an opportunity to companies which have defaulted in filing of any of the documents, statements, returns, including annual statutory documents to the MCA-21 Registry (Defaulting Company), to make good their past filing related non-compliances and enable the company to start on a clean slate. CFSS 2020 came into force on April 1, 2020 and shall be available till September 30, 2020.

Salient features of Fresh Start Scheme

- **Non applicability of CFSS 2020** – The CFSS 2020 is not applicable in following circumstances:
 - Companies against which action for final notice for striking off the name under section 248 of the Companies Act, 2013 (**CA 2013**) has already been initiated by designated authority
 - Where an application has already been filed by company for action of striking off name of the company from Registrar of Companies
 - Companies which have amalgamated under scheme of arrangement or compromise under CA 2013/CA 1956
 - Where application has already been filed for obtaining dormant status under section 455 of CA 2013 before CFSS 2020
 - Vanishing companies
 - Where any increase in authorized share capital is involved and also to charge related documents (CHG-1, CHG-4, CHG-8 and CHG-9)

However, Government of India, Ministry of Corporate Affairs has issued an additional scheme dated June 17, 2020 called 'Scheme for relaxation of time for filing forms related to creation and modification of charges under CA 2013' (**Scheme**) by which certain relaxations in timelines have been provided for filing of Form No. CHG-1 and Form No. CHG-9. The details of this Scheme are discussed in subsequent parts of this note.

- **Normal fees for belated filing of document(s)** – No additional fee is required to be paid for belated filing of document(s) under the CFSS 2020. Every Defaulting Company is only required to pay normal fees as prescribed under Companies (Registration Offices and Fee) Rules, 2014 (**Companies Fee Rules, 2014**) for such belated filing.
- **Immunity against prosecution or proceedings** – It provides an opportunity to Defaulting Company to seek immunity against any prosecution or proceedings for belated filings of documents under CA 2013/CA 1956 made under CFSS 2020, by filing e-Form CFSS 2020 within 6 months post closure of CFSS 2020. However, any consequential proceedings, including any proceedings involving interests of any shareholders or any other person qua the company or its directors or key managerial personnel, are not covered. This immunity is not available for management disputes pending before any court of law or tribunal. Further, immunity shall not be provided in cases where court has ordered conviction in the matter or an order imposing penalty has been passed by adjudicating authority under CA 2013/CA 1956 and no appeal has been preferred against order under CFSS 2020. After issuance of immunity certificate, designated authority will be obligated to withdraw prosecution(s) pending, before the concerned court(s) and proceedings for adjudication of penalties under Section 454 of CA 2013.

- **Precondition to seek immunity** – If Defaulting Company desires to seek immunity against prosecution or proceedings for belated filing made under CFSS, 2020, it will have to withdraw any appeal that has been filed against any notice issued or complaint filed or an order passed by a court or by an adjudicating authority under CA 2013, before competent court or authority for violation of the provisions under CA 2013/CA 1956. Applicant is required to withdraw appeal and furnish proof of the same before filing an application for issue of immunity certificate.
- **Special measures for cases where the order of adjudicating authority was passed but appeal was not filed** – In cases where due to delay in filing of document(s), penalties were imposed by adjudicating officer under CA 2013/CA 1956 and no appeal was preferred by Defaulting Company or its officers before Regional Director under Section 454(6) of CA 2013 as on date of CFSS 2020, the following would apply:
 - Where last date for filing for an appeal against order of adjudicating authority under Section 454(6) of CA 2013 falls between March 1, 2020 to May 31, 2020 (both days included), a period of 120 additional days is allowed with effect from such last date to all companies and their officers for filing an appeal before concerned Regional Directors
 - During such additional period, prosecution under Section 454(8) of CA 2013 for non-compliance of order of adjudicating authority, insofar as it relates to delay associated in filing of any documents, statement of returns, etc. in the MCA-21 Registry, shall not be initiated against company or their officers
- **Benefit for inactive companies** – Defaulting Company that is inactive while filing due document(s) under CFSS 2020 may simultaneously either apply to get themselves declared as dormant company under Section 455 of CA 2013 by filing e-form MSC-1 at a normal fee on said form, or apply for striking off name of the company by filing e-Form STK-2 by paying fee payable on form STK-2.

Salient features of Scheme for relaxation of time for filing of forms related to creation and modification of charges under CA, 2013

- **Applicability** – Scheme is applicable to filing of Form No. CHG-1 (for creation, modification of charge other than those related to debentures) and Form No. 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) (**Form or Forms**) by a company or charge holder. However, Scheme is not applicable in cases where:
 - The form has already been filed before date of issue of Scheme
 - Timeline for filing form has already expired under Section 77 or 78 of CA 2013 prior to March 1, 2020
 - Timeline for filing form expires at a future date, despite exclusion of time as provided under Scheme
 - Filing of CHG-4 for satisfaction of charge
- **Relaxation in timelines**
 - Where charge creation/modification of charge is before March 1, 2020 but timeline for filing such form has not expired under section 77 of CA 2013, period beginning March 1, 2020 and ending on September 30, 2020 will not be reckoned for purpose of counting number of days. In case form is not filed within said period, first day after February 29, 2020 will be reckoned as October 1, 2020 for purpose of counting number of days within which the form is required to be filed.
 - Where charge creation/modification of charge falls on any date between March 1, 2020 and March 30, 2020 (both dates inclusive), period beginning from date of creation/modification of charge to September 30, 2020 shall not be reckoned for purpose of counting of days. In case form is not filed within such period, first day after date of creation/modification of charge shall be reckoned as October 1, 2020 for the purpose of counting the number of days within which the form is required to be filed..
- **Applicable fees in above-mentioned scenarios**
 - Where charge creation/modification of charge is before March 1, 2020 but timeline for filing such form has not expired under Section 77 of the CA 2013 and form is filed on or before September 30, 2020, fees payable as on February 29, 2020 under Companies Fee Rules, 2014 for said form shall be charged. However, if form is filed after September 30, 2020, applicable fees shall be charged under Companies Fee Rules, 2014 after adding number of days beginning from October 1, 2020 and ending on date of filing plus time period lapsed from date of the creation of charge till February 29, 2020
 - Where charge creation/modification of charge falls on any date between March 1, 2020 and March 30, 2020 (both dates inclusive) and form is filed before September 30, 2020, normal fees shall be payable under Companies Fee Rules, 2014. However, if form is filed thereafter, first day after date of creation/modification of charge shall be reckoned as October 1, 2020 and number of days till date of filing of form shall be counted for purposes of payment of fees under Companies Fee Rules, 2014.

