



Companies Fresh Start Scheme, 2020 [CFSS-2020]



The Ministry of Corporate Affairs (MCA) vide General Circular No.12/2020 dated 30/03/2020 has introduced **Companies Fresh Start Scheme, 2020** (CFSS / Scheme) to provide relief to companies which have defaulted in filing e-forms on the portal of MCA connected with various corporate decisions and transactions undertaken. CFSS provides opportunity to the companies to make good any non-filing related default, irrespective of duration of default, and make a fresh start as a fully compliant company.

CFSS is in furtherance of the Ministry's Circular No. 11/2020, dated 24th March, 2020 providing relief to companies on various aspects due to disruption brought about by Covid-19.

Applicability:

The Scheme provides relief for a company which has defaulted in filing certain e-forms under the Companies Act, 2013 (the Act) or under the erstwhile Companies Act, 1956 (Old Act) In terms of the respective provisions of the Act and the Old Act. The Scheme kicks into force from 01/04/2020 and ends on 30/09/2020. The Scheme applies for specified documents filed belatedly during the said period of the Scheme.

Non-applicability of the Scheme

The Scheme is not applicable to a company:

- a. against which action for issuance of final notice for striking off the name under Section 248 of the Act has already been initiated by the Registrar of Companies (RoC);
- b. which has filed an application seeking striking off the name of the company from the Register of Companies;



- c. which has been amalgamated (transferor companies) under a scheme of arrangement or compromise under the Act;
- d. which has filed application for obtaining Dormant Status under section 455 of the Act;
- e. which is a vanishing company;
- f. in respect of which management disputes is pending before a court of law;
- g. in respect of which court has passed an order convicting the company and / or officer(s) in default and no appeal had been preferred against such order
- h. in respect of which an order imposing penalty is already passed by an adjudicating authority under 454 of Act and the period to appeal falls prior to 01/03/2020 and no appeal is preferred against such order in terms of Section 454(6) of the Act.

Eligible e-forms

The MCA has posted a detailed list of e-forms on its portal (www.mca.gov.in) that are eligible to be filed under the Scheme.

In-eligible e-forms

The Scheme does not apply to

- a. e-Form to be filed for increase in authorized share capital (Form SH7)
- b. e-form to be filed for creation, modification and satisfaction of charges (CHG-1, CHG-4, CHG-8 and CHG-9)

Benefits under the Scheme

- a. Only normal filing fee will apply irrespective of period of delay in filing e-forms. In other words, additional fees need not be paid, providing immense savings for defaulting companies.
- b. The defaulting company will get immunity against prosecution for delayed filing in terms of Section 403 read with the relevant Section under which the e-form ought to have been filed within due date.
- c. Immunity is limited only against prosecution for belated filing. Immunity is not available for any other consequential proceedings, including any proceedings involving interests of any shareholder or any other person qua the company or its directors or key managerial personnel connected with the transaction for which e-form is filed.
- d. The Scheme makes it clear that immunity is not available for non-compliance of any condition or requirement which can be acted upon only upon filing of the e-form concerned.



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WEDNESDAY, 08 APRIL 2020

For eg. Under Section 42 (8) of the Act, every company is required to file a return of allotment within the period provided therein. However, the proviso to Section 42 (4) also requires that utilisation of money raised through private placement shall not be made, unless the return of allotment has been filed. The immunity under the Scheme will only be available for belated filing of the e-form (PAS-3) and not for the offence arising out of utilisation of amount prior to filing of the said e-form.

- e. The companies which are inactive can file all the pending e-forms and can make application to get themselves declared as Dormant Company under Section 455 of the Act.
- f. Companies which have no activity and which do not want to be declared dormant, can apply for striking off the name of the company.

How to avail the Scheme?

- a. File all the e-forms which are not filed within the due date, on or before 30th September, 2020.
- b. File the Form CFSS-2020 to be notified by MCA with the Designated Authority, being the jurisdictional RoC, for obtaining immunity certificate. The Form CFSS-2020 can be filed (without filing fee and without need for any certification by a professional) only post the date of closure of the Scheme i.e., after 30th September, 2020 but on or before 31st March, 2021.

Conditions precedent to avail benefit under the Scheme in litigation matters

- a. The Scheme provides that RoC will withdraw all pending cases in respect of non-compliances relating to non-filing of forms including the prosecution pending before court or pending proceedings of adjudication of penalties under Section 454 of the Act;
- b. The Scheme provides that if legal proceedings have already been initiated against the defaulting company and its officer(s) in default, for default in non-filing or belated filing of a document or e-form (within due date) and an appeal has been filed against any notice issued or compliant filed or an order passed by a court or by an adjudicating authority under the Act, before a competent court or authority for violation of the provisions under the Companies Act, 1956 and/or Companies Act. 2013, such defaulting company should withdraw the “appeal” and furnish the proof of such withdrawal along with the Form CFSS-2020 to be filed.
- c. The Scheme further provides that where an order was already passed by the adjudicating authority (under Section 454 on adjudication of penalties) and the period of appeal falls between 01/03/2020 to 31/05/2020, a time period of 120 additional days is given [in addition to 60 days’ time available as per Section 454 (6) of the Act from the date of order] to file an appeal before the Regional Director. During the extended period, the prosecution for non-compliance of Section 454(6) remains suspended.



Lack of clarity

The Scheme lacks clarity on the following points:

- (i) Though the Scheme provides for filing of all e-forms and documents required to be filed both under Old Act and the Act, it is not clear as to how e-forms purported to have been filed under the Old Act (other than what is specified) can be filed now. Only certain e-forms like for filing annual accounts, annual return and auditor appointments are enabled for filing.
- (ii) It is not clear what “appeal” per se means in respect of a show-cause notice issued or complaint filed in a court against non-compliance or non-filing of an e-form. The Scheme seems to suggest that where an order is passed by a court (in prosecution proceedings) or the adjudicating authority (in adjudication proceedings) and an appeal is preferred by the company or its officer(s) in default, then such appeal needs to be withdrawn to be eligible to avail immunity under Scheme.
- (iii) The Scheme does not provide for matters where application for compounding of offences has been filed with Regional Director / NCLT, as the case may be, and yet to be heard or decided.

The Scheme is expected to provide a wonderful opportunity for companies and their officers in default to seek immunity against all filing related defaults and come clean on compliances.

It is advisable for every company to conduct a verification audit of transactions done both under the Old Act and the Act to identify such transactions in respect of which e-forms are not filed and avail the Scheme.

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