

Client Alert

Companies Fresh Start Scheme, 2020

In view of the COVID-19 outbreak, the Ministry of Corporate Affairs (“**MCA**”) has, *vide* General Circular No. 12/2020 dated March 30, 2020, introduced the Companies Fresh Start Scheme, 2020 (“**Scheme**”) in order to provide an opportunity to companies incorporated in India to make good the defaults made by them in relation to statutory filings under the Companies Act, 1956 / Companies Act, 2013 (the “**Act**”).

The salient features of the Scheme are as follows:

- (a) The Scheme shall remain in force from April 1, 2020 till September 30, 2020. The Scheme shall not apply to certain companies such as vanishing companies, companies which have amalgamated under a scheme of arrangement or compromise etc.
- (b) The Scheme permits companies registered in India that have defaulted in filing any documents, statements, returns etc., including annual statutory filings on the MCA-21 registry (“**Defaulting Companies**”), to file such documents, statements, returns etc. with payment of only normal fees and no additional fees.
- (c) The Scheme offers an immunity to such Defaulting Companies from any prosecution or proceeding for imposing penalty to the extent that such prosecution or proceeding pertains to delay in filings of the documents, statements, returns etc. on the MCA-21 registry.
- (d) In order to avail of the Scheme, Defaulting Companies are required to withdraw beforehand any appeal filed by them against any notice/ complaint/ order of any court or adjudicating authority for violation of the provisions of the Act in respect of which the application is made under the Scheme.
- (e) In case any penalty has been imposed by the adjudicating authority under the Act for a delay in filing of documents, statements etc. and no appeal has been initiated by the concerned company, such company has been provided with an additional 120 days to file an appeal under the Scheme from the last date up to which an appeal should have been filed. In such case, the Scheme provides a protection that no prosecution shall be initiated for non-compliance of the orders of the adjudicating authority. Such a right can only be availed if the last date for filing of appeal falls between March 01, 2020 to May 31, 2020 (both days included).
- (f) Defaulting Companies that have ‘inactive’ status can apply under the Scheme to either declare themselves as dormant companies or to strike-off their name.
- (g) After the pending filings are made by a Defaulting Company, such company must apply in

Form CFSS-2020 to the MCA for issuance of an immunity certificate with respect to the documents filed under the Scheme. The said form is required to be filed within six (6) months after the expiry of the Scheme. No fee is required to be paid along with Form CFSS-2020.

- (h) After the immunity certificate is received by a Defaulting Company, the designated authority shall withdraw all prosecutions pending with respect to the filings for which the immunity certificate has been issued.

A copy of the Scheme is annexed for your ready reference.

About Chadha & Co.

Chadha & Co. is a leading corporate and commercial law firm based in New Delhi, India. The Firm has a specialized inbound practice in advising domestic and foreign corporations doing business in India on all Indian laws and regulations that are relevant to their business.

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Annexure

General Circular No. 12/2020

F.No. 02/01/2020-CL-V

Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi,

Dated: 30/03/2020

To
All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Companies Fresh Start Scheme, 2020.

Sir(s),

In furtherance of the Ministry's Circular No. 11/2020, dated 24th March, 2020 and in order to facilitate the companies registered in India to make a fresh start on a clean slate, this Ministry has decided to take certain alleviative measures for the benefit of all companies.

2. Companies Act, 2013 requires all companies to make annual statutory compliance by filing the Annual Return and Financial Statements. Apart from this, various other statements, documents, returns, etc are required to be filed on the MCA21 electronic registry within prescribed time limits. Filing fees for filing such statements, documents, returns, etc is governed by section 403 of the Companies Act, 2013 read with Companies (Registration Offices and Fees) Rules 2014.

3. The Ministry has received representations from various stakeholders requesting for grant of one-time opportunity, so as to enable them to complete their pending compliances by filing necessary documents in the MCA-21 registry including annual filings without being subject to a higher additional fees on account of any delay.

4. In order to give such an opportunity to the defaulting companies and to enable them to file the belated documents in the MCA-21 registry, the Central Government in exercise of powers conferred under section 460 read with section 403 of the Companies Act, 2013 has decided to introduce a Scheme namely "**Companies Fresh Start Scheme, 2020 (CFSS-2020)**" condoning the delay in filing the above mentioned documents with the Registrar, insofar as it relates to charging of additional fees, and granting of immunity from launching of prosecution or proceedings for imposing penalty on account of delay associated with certain filings. Only normal fees for filing of documents in the MCA-21 registry will be payable in such case during the currency of CFSS-2020 as per the provisions of section 403 read with Companies (Registration Offices and Fee) Rules, 2014 and section 460 of the Act..

5. In addition, the scheme gives an opportunity to inactive companies to get their companies declared as 'dormant company' under section 455 of the Act by filing a simple application at a normal fee. The said provision enables inactive companies to remain on the register of the companies with minimal compliance requirements.

6. **The details of the Scheme are as under:-**

(i) The scheme shall come into force on the 01.04.2020 and shall remain in force till 30.09.2020

(ii) **Definitions** - In this Scheme, unless the context otherwise requires,

(a) "Act" means the Companies Act, 2013 and Companies Act, 1956 (where ever applicable);

(b) "Company" means a company as defined in clause (20) of section 2 of the Companies Act, 2013;

(c) "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 on the MCA-21 registry;

(d) "Designated authority" means the Registrar of Companies having jurisdiction over the registered office of the company;

(e) "Immunity certificate" means the certificate referred to in sub-paragraph [viii] of paragraph 6 of the Scheme;

(f) "Inactive Company" means a company as defined in Explanation (i) to sub-section (1) of section 455(1) of the Companies Act, 2013;

(iii) **Applicability:** - Any "defaulting company" is permitted to file belated documents which were due for filing on any given date in accordance with the provisions of this Scheme:

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(iv) **Manner of payment of normal fees for filing of belated documents and seeking immunity under the Scheme** - Every defaulting company shall be required to pay normal fees as prescribed under the Companies (Registration Offices and Fee) Rules, 2014 on the date of filing of each belated document and no additional fee shall be payable. Immunity from the launch of prosecution or proceedings for imposing penalty shall be provided only to the extent such prosecution or the proceedings for imposing penalty under the Act pertain to any delay associated with the filings of belated documents. 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 would not be covered by such

immunity. For example, under section 42(8), 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 the utilization of money raised through private placement shall not be made unless the return of allotment has been filed in the registry. Now, the immunity under the Scheme shall only be available in respect of the proceedings for imposing penalty on account of delay in filing the return of allotment, but not on account of utilization of the money raised through private placement prior to the filing of the return with the registry.

(v) **Withdrawal of appeal against any prosecution launched or the proceedings for imposing penalties initiated:** If the defaulting company, with respect to any statutory filing under the Act, or its officer in default, as the case may be, has filed any appeal against any notice issued or complaint 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, in respect of which the application is made under this scheme, the applicant shall before filing an application for issue of immunity certificate, withdraw the appeal and furnish proof of such withdrawal along with the application.

(vi) **Special measures for cases where the order of the adjudicating authority was passed but the appeal could not be filed:** In all cases where due to delay associated in filing of any document, statement or return, etc. in the MCA-21 registry, penalties were imposed by an adjudicating officer under the Act, and no appeal has been preferred by the concerned company or its officer before the Regional Director under section 454(6) as on the date of commencement of the Scheme, the following would apply:-

- (A) Where the last date for filing the appeal against the order of the adjudicating authority under section 454(6) falls between the 1st March, 2020 to 31st May, 2020 (both days included), a period of 120 additional days shall be allowed with effect from such last date to all companies and their officers for filing the appeal before the concerned Regional Directors;
- (B) During such additional period as stated in (A) above, prosecution under section 454(8) for non-compliance of the order of the adjudicating authority, insofar as it relates to delay associated in filing of any document, statement or return, etc. in the MCA-21 registry shall not be initiated against such companies or their officers;

(vii) **Application for issue of immunity in respect of document(s) filed under the Scheme** - The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the Form **CFSS-2020** annexed, after closure of the Scheme and after the document(s) are taken on file, or on record or approved by the Designated authority as the case may be but not after the expiry of six months from the date of closure of the Scheme. There shall not be any fee payable on this Form.

Provided that this immunity shall not be applicable in the matter of any appeal pending before the court of law and in case of management disputes of the company pending before any court of law or tribunal:

Provided also that no immunity shall be provided in case any court has ordered conviction in any matter, or an order imposing penalty has been passed by an adjudicating authority under the Act, and no appeal has been preferred against such orders of the court or of the adjudicating authority, as the case may be, before this Scheme has come into force.

(viii) **Order by designated authority granting immunity from penalty and prosecution** - Based on the declaration made in the Form CFSS-2020, an immunity certificate in respect of documents filed under this Scheme shall be issued by the designated authority.

(ix) **Scheme not to apply in certain cases** - This scheme shall not apply :-

- a. to companies against which action for final notice for striking off the name u/s 248 of the Act (previously section 560 of Companies Act, 1956) has already been initiated by the Designated authority;
- b. where any application has already been filed by the companies for action of striking off the name of the company from the register of companies;
- c. to companies which have amalgamated under a scheme of arrangement or compromise under the Act;
- d. where applications have already been filed for obtaining Dormant Status under section 455 of the Act before this Scheme;
- e. to vanishing companies;
- f. Where any increase in authorized capital is involved (Form SH-7) and also charge related documents (CHG-1, CHG-4, CHG-8 and CHG-9);

(x) **Effect of immunity:** After granting the immunity, the Designated authority concerned shall withdraw the prosecution(s) pending, if any, before the concerned Court(s) and the proceedings of adjudication of penalties under section 454 of the Act, other than those referred in the second proviso to sub-paragraph (vii) of paragraph 6 of this Scheme, in respect of defaults against which immunity has been so granted shall be deemed to have been completed without any further action on the part of the Designated authority;

(xi) **Scheme for Inactive Companies:** The defaulting inactive companies, while filing due documents under **CFSS-2020** can, simultaneously, either:

- a. apply to get themselves declared as Dormant Company under section 455 of the Companies Act, 2013 by filing e-form MSC-1 at a normal fee on said form; or
- b. apply for striking off the name of the company by filing e-Form **STK-2** by paying the fee payable on form **STK-2**.

7. At the conclusion of the Scheme, the Designated authority shall take necessary action under the Act against the companies who have not availed this Scheme and are in default in filing these documents in a timely manner.

8. This issues with the approval of the competent authority.

Yours faithfully,


(KMS Narayanan)
Assistant Director (policy)

Copy forwarded for information to:-

1. E-Governance section.

FORM

[Pursuant to Companies Fresh Start Scheme, 2020]

Application for issue of immunity certificate
under the Companies Fresh Start Scheme (CFSS),
2020

To

The Registrar of Companies,

Sir/ Madam,

I hereby make an application for issue of immunity certificate under the Companies Fresh Start Scheme, 2020 and give below the following particulars, namely; -

1. (a) Corporate identity number (CIN)

Pre-fill

(b) Global Location Number (GLN) of company

2. (a) Name of the company

(b) Address of the registered office or principal place of business in India of the company

(c) email id of the company

3. Details of documents filed under the Companies Fresh Start Scheme, 2020

Total number of Service Request Number (SRN)(s)

Pre-fill

SRN	Form number(s)	Date of filing (DD/MM/YYYY)	Date of event (DD/MM/YYYY)	Normal Fees charged under CFSS, 2020 (in Rs.)	Total Fees paid (in Rs.)
Total					

4. Whether any appeal(s) was filed against any notice issued or complaint filed, or an order passed by a court or by an adjudicating authority under the Act, before a competent court or authority, before the commencement of the Scheme, for violation of the provisions under the Act in respect of the above mentioned documents(s). If yes attach proof of withdrawal of such appeal.

Yes ☐ No ☐ Not Applicable ☐

5. Whether any prosecution(s) is pending in court against the company and its officers in respect of belated documents filed under the scheme. If yes, provide the details thereof as an attachment.

Yes ☐ No ☐

Attachments

List of attachments

1. Proof of withdrawal of any appeal(s) against any notice issued or complaint filed or an order passed by a court or by an adjudicating authority under the Act.

Attach

2. Details in respect of prosecution(s) pending against the company and its officers in respect of belated documents filed under the scheme which requires withdrawal by the Registrar.

Attach

3. Optional attachment(s) - if any

Attach

Remove Attachment

Verification

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete.

☐ I have been authorised by the Board of directors' resolution number

dated (DD/MM/YYYY) to sign and submit this application.

☐ I am duly authorized by the Board of director's to sign and submit this application.

☐ The company has failed to comply with the provisions of the Act as mentioned in respect of filing of above mentioned documents

☐ The company has withdrawn the appeals pending before any Court or NCLT/NCLAT or Regional Director or any other adjudicating authority.

To be digitally signed by

*Designation

DSC BOX

*Director Identification Number of the director;

or DIN or PAN of the manager or CEO or CFO;

or Membership number of the secretary

Modify

Check Form

Prescrutiny

Submit

For office use only:

Affix filing details

eForm Service request number (SRN)

eForm filing date

(DD/MM/YYYY)

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

Confirm Submission

Date of signing

(DD/MM/YYYY)

J

Immunity Certificate under CFSS, 2020

Government of India

Ministry of Corporate Affairs

<Name of the RoC office>

<Address of the RoC Office>

<Corporate Identify Number or Foreign Company Registration Number>, <CIN/FCRN>

Certificate for grant of immunity from prosecution or imposition of penalty under Companies Fresh Start Scheme (CFSS), 2020.

Whereas <Company Name> (herein referred to as the company) has filed the documents mentioned below and has filed an application under the CFSS, 2020 for grant of immunity from prosecution, under the Companies Act, 2013.

SRN	Form Number(s)	Date of filing (DD/MM/YYYY)	Date of event (DD/MM/YYYY)	Normal fees charged under CFSS, 2020 (in Rs.)	Total Fees (in Rs.)
Total					

And whereas the company has also declared that no petition or appeal was filed against any noticed issued or complaint filed before any Court or NCLT or NCLAT or Regional Director or any other adjudicating authority for violation of the provisions under the Act in respect of the above mentioned documents(s), or where filed, has withdrawn such appeal.

Now therefore, in exercise of the powers conferred under CFSS, 2020 the undersigned hereby issues this certificate to the said company granting immunity from prosecution or imposition of penalty under the Act subject to the provisions contained in the scheme in respect of aforesaid document(s) covered in the application.

<Full name of the authorizing approving the work-item>

<ARoC/DROc/RoC>

<Registrar of Companies>

<Name of the RoC Office>

Mailing address as per record available in Registrar of Companies Office:

<Name of the Company>

<Address of the registered office or of the principal place of business in India of the company>

*Note: Immunity Certificate has been generated on the basis of the declaration made in the Form, which may be subject to verification at an appropriate stage. Immunity under the Companies Act, 2013 shall be available strictly in accordance with the terms and conditions mentioned in the Companies Fresh Start Scheme (CFSS), 2020 and will be limited to any default associated with the delay in filing of documents in the registry.