

## **Companies Fresh Start Scheme 2020**

### **Introduction:**

In the wake of COVID 19 economic fallout, the Indian Government is taking all necessary efforts to provide series of relaxation to the corporate entities to make good of any filing related default and grant immunity from penal proceedings including against the imposition of the penalties for late or delay in filing compliance necessary under the Company Law. That by the circular dated March 24, 2020, the Ministry of Corporate Affairs has introduced a scheme named as “**Companies Fresh Start Scheme**”. The scheme is intended to provide an onetime opportunity to the Companies registered under Companies Act, 1956 & 2013 (**Act**), *to make good of any filing related defaults*, irrespective of the duration of default so to have a “**Fresh Start**”.

### **Applicability of the Scheme:**

The Scheme shall be in effect from April 1, 2020 to September 30, 2020. It is applicable to all the “Defaulting Companies” defined under the scheme, which defaulted in the filing of any of the documents, statement, return, etc, including annual statutory documents on the MCA-21 registry. The Scheme provides an opportunity to the defaulting companies to enable them to file belated documents in the MCA-21 registry, only on payment of nominal fee, with immunity from launching prosecution or proceedings for imposing a penalty on account of delay associated with the certain filing.

The Scheme also allows the inactive companies<sup>[1]</sup> to get their companies declared as “dormant companies” under Section 455 of the Act, which enables the inactive companies to remain on the register of the companies with minimal compliance requirements.

### **Cases of Non-applicability of Scheme:**

The Scheme shall not be applicable in the following cases:

1. to the companies against which action for final notice for striking off the name of the under Section 248 of the Act, has already been initiated by the Designated authority;
2. where an application has already been filled by the companies for the action of striking off the name of the company from the register of companies;
3. to companies which have amalgamated under a scheme of arrangement or compromise under the Act;
4. where the application has already filed for obtaining Dormant Status under Section 455 of the Act before this Scheme;
5. to vanishing companies and;
6. where the form to be filed with Registrar of Companies related to an increase in authorized share capital and pertains to any charge related filings.

### **Waiver of Additional Fee and Immunity from Prosecution:**

The Scheme provides a waiver of additional fees or penalties against the Defaulting companies on the payment of nominal fees.

The scheme provides an opportunity to the defaulting companies to file their belated documents on the payment of nominal fees as prescribed under the Companies (Registration offices and fees) Rules, 2014 and no additional fee shall be payable and immunity from initiating any proceedings for imposing penalty in relation to such delay in filing.

However, it is essential to note that the Scheme has no applicability to the consequential proceedings, including any proceedings involving interests of any shareholder or any other person qua the company or its director or its key managerial personnel would not be covered by such immunity.

Immunity shall not be applicable on the disputes related to the management of the company, pending before the court of law or tribunal; neither it will be applicable in cases where a court has passed an order of conviction and have imposed a penalty under the Act, against which no appeal is preferred before the court, as the case may be before the Scheme has come into force.

#### **Withdrawal of Appeal:**

If a defaulting company or any of its officer on its behalf has filed an appeal against any notice issued or complaint filed or an order passed by a court or an adjudicating authority under the Act, before a competent court, for violation of a provision of Act, in respect of which the application is made under this scheme, the applicant before filing for issuing of immunity certificate, shall withdraw the appeal and furnish the proof of such withdrawal.

In cases, where an order of penalty for delay in filing of necessary documents are passed against the defaulting company or its officer, however, no appeal has been preferred against such order before the Regional Director under Section 454(6) of the Act by April 1, 2020, then in such cases:

1. if the last date for filing such appeal falls between March 01, 2020 and May 31, 2020 (inclusive of both days), an additional period of 120 days from the last date on which such appeal should have been filed shall be provided; and
2. during the additional period of 120 days, prosecution for noncompliance of an order in relation to any delay in statutory filing shall not be initiated against the Defaulting Company or its officers

#### **Comments:**

At the time when COVID-19 pandemic is unleashed on the whole world, causing unprecedented situation regarding public health and safety, the Ministry of Corporate Affairs attempts to ease filling compliances for the companies by the introduction of the scheme, which will provide long term benefit to all defaulting companies which have previously failed to make the required filings under the Act. Thought it an amnesty scheme grants immunity from prosecution and additional penalties imposed with the delay in filing of documents, it does not insulate companies against the other substantive non-compliance under the Act.

[\[1\]](#) "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. "Significant Accounting Transaction" means any transaction other than (a) payment of fees by a company to the Registrar; (b) payments made by it to fulfil the requirements of the Act or any other law; (c) allotment of shares to fulfil the requirements of the Act; and (d) payments for maintenance of its office and records.