

**FAQs on Companies Fresh Start Scheme, 2020**  
**(CFSS-2020)**

**1. What is Companies Fresh Start Scheme, 2020?**

This is a scheme to provide the Companies a one-time opportunity to complete their pending compliances by filing relevant documents with the Registrar of Companies (“**ROC**”). The Companies can make the filing and get the delay condoned without any additional filing fee and will also get immunity from prosecution against the filing delays & defaults.

**2. What is the nature of non-compliances on which the said Scheme applies?**

As per the Scheme, all filing related non-compliances like non-filing of Annual Return, Financial Statement, other documents, statements and returns which are required to be filed on the MCA-21 registry will be covered under the Scheme except those mention in Questionnaire 5 & 6 below.

**3. Who will be benefitted from the Companies Fresh Start Scheme, 2020 (“Scheme”)?**

As per the Scheme, any ‘defaulting company’ is permitted to avail benefits of the Scheme by filing belated documents which were due for filing on any given date. As per the Scheme a ‘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.

**4. What is the validity period for making the necessary filings under the said Scheme?**

The defaulting companies can avail the benefits of the Scheme with effect from 1st April, 2020 to 30<sup>th</sup> September, 2020 (both days included).

**5. What are the scenarios in which a Company cannot avail the benefit under this scheme?**

As per the Scheme, a company cannot avail the benefits of the Scheme in the following circumstances:

- a) In case of delay in forms relating to increase in authorised share capital (Form SH-7) and charge related forms (form CHG-1, CHG-4, CHG-8 and CHG-9)
- b) A final notice for striking off the name of the company under section 248 of the Act has already been issued by the ROC;
- c) The company has made an application for striking off its name from the register of companies of ROC;
- d) Companies which have amalgamated under the scheme of compromise & arrangement;
- e) The company has applied for obtaining dormant status under section 455 of the Act before the Scheme has been introduced.
- f) Vanishing Companies;

**6. Which non-compliances relating to filing of forms are not covered under this scheme?**

The Scheme does not apply on the following non-compliances:

- a) Non-filing of documents related to Increase in authorised share capital (Form SH-7);
- b) Non-filing of charge related documents (Form CHG-1, Form CHG-4, Form CHG-8 and Form CHG-9);

**7. What is the prescribed fee for availing the benefit under the scheme?**

As per the Scheme, every defaulting company shall be required to pay normal fees as prescribed under the relevant rules under the Act, the defaulting company which is filing any belated returns, documents and forms is not required to pay any additional filing fees for delay in filing.

**8. What defaults shall not be Immune under the scheme?**

The Scheme specifies that only filing related delays will be condoned and immunity will be granted only with respect to penalty or prosecutions specified under the Act in relation to filing defaults but not with respect to substantial contravention involving interest of stakeholders, company or its directors or KMP.

For example, Section 42 of the Act required filing of return of allotment in form PAS-3 after allotment of securities. The said section also specifies that the money raised through private placement of securities shall not be utilised unless the return of allotment has been filed by the company with the ROC. Now as per the Scheme, the immunity will be available only for penalty for delay in filing of return of allotment not for the utilisation of money raised prior to filing of return of allotment.

**9. What are the remedial measures available to a company against which any prosecutions has been launched or penalties have been imposed?**

In the cases, wherein the penalties are imposed under the Act and the company has not filed any appeal to higher authorities as on the date of commencement of the Scheme, then where the last date for filing period of appeal lies between 1<sup>st</sup> March 2020 to 31<sup>st</sup> May 2020, a period of additional 120 days be allowed for filing of appeal from last date as may be specified under the order. Further, during such additional period of 120 days any prosecution or action will not be initiated against the

companies or its officers so far as the default is relating to non-filing of returns, documents or forms.

**10. What will happen in case if a Company has already filed an appeal against the order passed by the competent authority or adjudicating officer?**

Where a defaulting company has already filed an appeal before the higher authority against the order passed by any adjudicating authority or court or Tribunal, and if such company is desirous of availing the immunity available in the Scheme, then such company has to withdraw such appeal before filing an application.

**11. What is immunity certificate? What is the procedure for obtaining the immunity certificate?**

“Immunity certificate’ means the certificate referred to in subparagraph viii of paragraph 6 of the Scheme. Any defaulting company or its officer, can file an application electronically in **E-form “CFSS-2020”** seeking immunity in respect of belated documents, after closure of the Scheme and after documents are taken on file, or on record or approved by the concerned authority but not after the expiry of 6 months from the date of closure of the Scheme.

However, the immunity shall not be applicable in following cases:

- i. Where any appeal or management dispute of the company is pending before any court of law;
- ii. In case of conviction order is passed by a court or adjudicating authority & no appeal has been made by the company or officers before the date of enforcement of the Scheme.

After the concerned authority grants immunity certificate, the concerned authority shall withdraw the prosecution pending against the defaulting company.

## **12. What shall be the effect of immunity under the Scheme?**

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 question above, 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.

## **13. Is there any option available to inactive companies under the Scheme?**

As per the Scheme, the defaulting inactive company, after filing all the belated returns and documents, can simultaneously apply either for availing dormant status under Section 455 of the Act or for striking of its name from the register of Companies under Section 248 of the Act.

## **14. What are the consequences in case any defaulting company does not avail the Scheme?**

As per the Scheme, the adjudication authority, after conclusion of the Scheme, shall take necessary actions against the defaulting companies which have not availed the Scheme.

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