



LexUpdate

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Relaxation Schemes for Companies and Limited Liability Partnerships

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Relaxation Schemes for Companies and Limited Liability Partnerships

In furtherance of its previous corporate governance reliefs, the Ministry of Corporate Affairs (“MCA”) has introduced the Companies Fresh Start Scheme, 2020 (“CFS Scheme”) and amended the LLP Settlement Scheme, 2020 vide its circular dated March 30, 2020 (“LLP Modified Scheme”) to allow defaulting companies and limited liability partnerships (“LLPs”) an opportunity to file belated documents, returns etc. without charging of additional fees with respect to the delay in filing and grant immunity from prosecution with respect to such delay.

We discuss herein below the key provisions of the CFS Scheme and LLP Modified Scheme.

1. **CFS Scheme**

Applicability: Any ‘defaulting company’ (defined as a company which has made a default in filing of any document, statements, returns etc.) is permitted to make belated filings of documents which were due on any given date without charging of additional fees.

Validity of Scheme: April 1, 2020 to September 30, 2020.

Payment of Fees: The defaulting company will need to pay normal fees as prescribed on the date of filing of each belated document and no additional fee will be payable.

Immunity from Prosecution/Penalty: Immunity will be granted with respect to initiation of prosecution/proceeding for imposition of penalty pertaining to the delay in filing of the belated documents. Any consequential proceedings, including any proceedings involving interests of shareholders or any other person qua the company or its directors or key managerial personnel, would not be covered by such immunity.



Application for Immunity Certificate: The defaulting company will need to make an application seeking immunity with respect to such filings.

However, immunity shall not be applicable for cases where:

- i. An appeal is pending before a court of law or in case of management disputes of a company pending before any court of law or tribunal;
- ii. Any court has ordered conviction in any matter, or an order imposing penalty has been passed by an adjudicating authority under the Companies Act, 2013 (“CA 2013”), and no appeal has been preferred against such orders of the court or adjudicating authority before the commencement of the CFS Scheme.

Timelines for Filing Application for Immunity Certificate: An application for grant of immunity under the CFS Scheme will have to be made within a period of six (6) months from the date of closure of the CFS Scheme.

Withdrawing of Appeal against Prosecution: Prior to filing of an application seeking immunity under the CFS Scheme, in case an appeal has been filed by a defaulting company against any notice issued or complaint filed or order passed by a court or adjudicating authority, the same will have to be withdrawn by the defaulting company.

Extension Period for Filing of Appeal: In cases where penalties were imposed by the adjudicating authority under CA 2013 for delay associated with filing of documents, returns etc. and no appeal has been preferred before the Regional Director on the date of commencement of the CFS Scheme, then

- i. Where the last date of filing of appeal falls between March 1, 2020 to March 31, 2020, an additional period of one hundred and twenty (120) days from the last date of filing will be given to all companies and their officers for filing of appeal before the Regional Director;
- ii. No prosecution will be initiated during the additional period as specified in point i. above for non-compliance of the order passed by the adjudicating authority insofar as it relates delay in filing of the document, returns etc.

Non-Applicability: The CFS Scheme will not be applicable to companies:

- i. against which final notice for striking off the name of the company has been issued;
- ii. which have filed an application for striking off their names from the register of companies;
- iii. which have amalgamated under CA 2013;
- iv. which have filed applications for obtaining dormant status;
- v. vanishing companies;
- vi. where any increase in authorised capital or any charge-related documents are involved.

Effect of Immunity: After grant of immunity, the Registrar of Companies shall withdraw pending prosecution or prosecution for adjudication of penalties other than cases where any court has ordered conviction in any matter, or an order imposing penalty has been passed by an adjudicating authority under CA 2013, and no appeal has been preferred against such orders of the court or adjudicating authority before the commencement of the CFS Scheme.

2. **LLP Modified Scheme**

Applicability: Any 'defaulting LLP' [defined as an LLP registered under the Limited Liability Partnership Act, 2008 ("**LLP Act**") which has made a default in filing of documents on the due dates specified in the LLP Act] is permitted to make belated filings of documents which were due for filing till August 31, 2020 without charging of additional fees.

Validity of Scheme: April 1, 2020 to September 30, 2020.

Immunity from Prosecution/ Penalty: Defaulting LLPs which have filed their belated documents till September 30, 2020 and made good on the default shall not be subject to prosecution for such defaults.

Non-Applicability: The LLP Modified Scheme shall not be applicable to LLPs which have made application for striking of their names from the register.

Feedback

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