

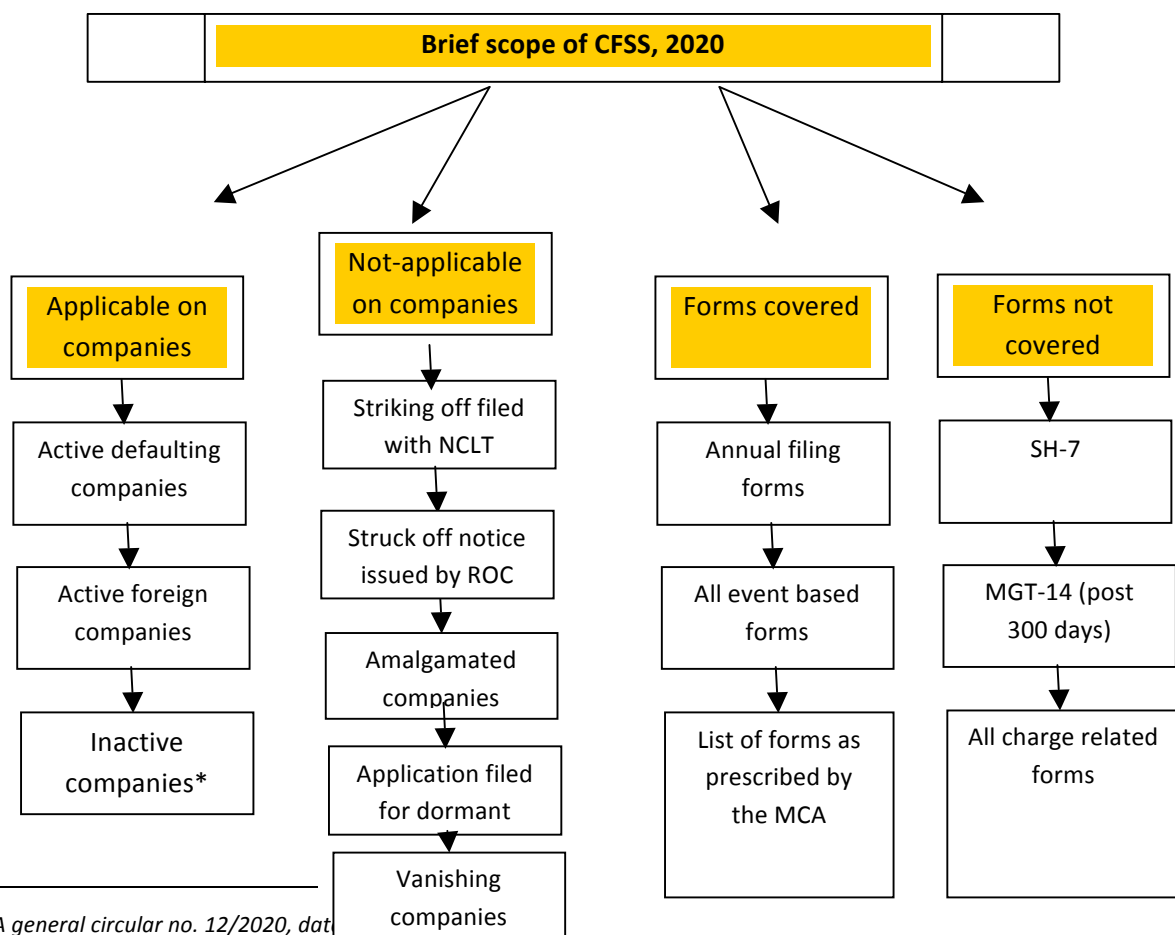
COMPANIES FRESH START SCHEME 2020
RE-SET OF CORPORATE COMPLIANCE STRUCTURE

During this difficult time, with a view to boost the economy and as a reform to promote ease of doing business, the government of India has been making tremendous efforts in clearing backlogs/disputes/appeals under direct and indirect taxes which has resulted in the launched settlement schemes under direct tax (vivaad se vishwas scheme) & indirect tax (sabka vishwas scheme).

The Ministry of Corporate Affairs, in the like way, understanding the immediate need to provide support to the corporates to smoothen their compliance system and reduce the cost burden, in addition to providing relataions and extentions for the compliance, has pressed the Re-set button. The Re-set button is in the form of the launching of the Companies Fresh Start Scheme ("CFSS 2020" or "Scheme") effective March 30, 2020¹, as a onetime opportunity to complete all pending compliances by filing necessary documents under Companies AC, 2013 ("CA, 2013") with the Registrar of Companies ("ROC") without being subject to additional fees or penal proceedings on account of delay in filings.

"One-time golden opportunity to set right the past default in ROC filings."

KEY CONTOURS



¹ MCA general circular no. 12/2020, dated March 30, 2020

In this write up, we have tried covering up the common questions that come across with each stakeholder. Let's discuss each approach of the Scheme in the heads below:

I. PURPOSE OF SCHEME

The Scheme is rolled out by MCA to help long defaulting companies to complete filing related compliance without any additional fees/ penalty/ prosecution on account of delay associated with certain filings.

Such certain pending filings could pertain to any past period of the company, which can be filed under this Scheme at the prescribed form fees (with no additional fees).

II. BASIC COVERAGE OF SCHEME

The Scheme is applicable to all defaulting companies, be it is registered in India or a foreign company.

"Defaulting company"² means a company defined under the CA, 2013, and which has made a default in filing of any of the documents, statements, returns, etc. including annual statutory documents on the MCA-21 registry.

*"Foreign company"³ means any company or body corporate incorporated outside India which,-
(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(b) conducts any business activity in India in any other manner.*

Cushion to inactive company under the Scheme -

"Inactive company"⁴ 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.

Defaulting inactive company, on filing documents and returns under the Scheme, can simultaneously apply for either of the following:

- ✓ to get declared as dormant company by filing e-form MSC-1 u/s 455 of the CA, 2013;
- ✓ get its name struck off by filing e-form STK-2 u/s 248(1) of the CA, 2013.

Forms allowed to file under the Scheme

MCA has allowed filing of certain forms under the Scheme as per the list provided⁵ which majorly covers all the forms to be filed with ROC, except few as stated in chart above.

²MCA general circular no. 12/2020, dated 30th March, 2020

³Section 2(42) of CA, 2013

⁴Explanation (1) to sub-section (1) of section 455(1) of CA, 2013

⁵http://www.mca.gov.in/Ministry/pdf/CFSS2020_02042020.pdf

III. CURRENCY OF SCHEME

The Scheme is commenced from April 1, 2020 and shall remain in force till September 30, 2020. All the pending filings have to be done within this currency to get the advantage of Scheme.

IV. FEE STRUCTURE

Normal fees shall be charged for the forms pending and covered under the Scheme, if filed during the currency of this Scheme. No additional fee shall be charged for same.

V. IMMUNITY

Consequent to the filing of belated forms under the Scheme, immunity against penalty and prosecutions for imposing penalty on such filings should be applied in e-form CFSS 2020 post the conclusion of the currency of Scheme until expiry of 6 months, i.e. from the period 01.10.2020 till 31.03.2021.

The details of service request number of forms filed should be provided in e-form CFSS 2020 to avail immunity against such belated forms filed. **No fee shall be charged for the e-form CFSS 2020.**

An “immunity certificate” against the e-form CFSS 2020 filed, shall be issued by the designated authority.

Let’s discuss some possible questions that may arise –

1. What if the forms are filed with delay during the currency of Scheme but immunity in e-form CFSS 2020 is not availed?

As stated by the MCA in its circular⁶, at the end of conclusion of this Scheme, the designated authority shall be taking necessary action under the CA, 2013 against the companies who have not availed this Scheme and are in default in filing these documents in a timely manner.

So one can opine that filing belated forms under this Scheme and not taking immunity against such forms may also be tracked and penalty/prosecution may be proceeded by MCA against such filings.

2. What immunity would exactly be provided for the belated filings under the Scheme?

As per the Scheme, the immunity against prosecutions / proceedings shall be given to the company upto the extent of default pertaining to the delay in filing of the documents with ROC.

3. What kind of defaults/contraventions shall not be immunised under the Scheme?

⁶MCA general circular no. 12/2020, dated 30th March, 2020

As stated in the Scheme, immunity shall be provided for the delay caused in filing such forms. Therefore, one can opine that, immunity shall not be given against the non-compliances associated with such filings which may involve the interest of stakeholders.

For example, under section 42(8) of the CA, 2013, every company is required to file a return of allotment within the period provided therein. However, the proviso to section 42(4) of the CA, 2013 also requires that the utilisation 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 utilisation of the money raised through private placement prior to the filing of the return with the ROC.

4. Whether the immunity under the Scheme can be availed for the belated filings done prior to the commencement of Scheme?

The immunity under the Scheme can be availed for the filings made during the currency of the Scheme i.e. from April 1, 2020 to September 30, 2020. There is no provision provided in the Scheme for the delayed filings made prior to the commencement of Scheme.

Contrary to above, where the prosecution is launched or proceedings for imposing penalties initiated by the competent authority on account of delayed statutory filings, the companies can file application for immunity under the Scheme in the manner as provided under question 5 below.

5. Can the application for immunity under the Scheme be made where the prosecution is launched or proceedings for imposing penalties initiated by the competent authority?

An application for issue of immunity certificate can be filed under the Scheme on account of any statutory filing, only where an appeal is filed against the prosecution launched or proceedings for imposing penalties initiated by the competent authority against the company or the officer in default, on the condition that such appeal is withdrawn before filing of application under the Scheme and proof of such withdrawal is attached in application.

6. Are there any exceptions where the application for immunity under the Scheme cannot be made?

Yes, in the following cases the application for immunity under the Scheme cannot be made –

- ✓ Where the filings could not be done on account of management dispute and such matter is pending before any court of law or tribunal;
- ✓ Where the order has been passed by an adjudicating authority under the CA, 2013 and no appeal has been preferred and also time line of filing appeal against such order is lapsed;
- ✓ Where order has been passed by an adjudicating authority under the CA, 2013 and no appeal has been preferred but the time line of filing appeal falls between 01.03.2020 to 31.05.2020. Such appeal time line shall stand increase to additional 120 days from the last date.

7. Why the company should avail this Scheme?

Here, we could not find any reason for not availing this Scheme, whereas there are several reasons to avail this Scheme, which are –

- ✓ No additional fees on belated filings made;
- ✓ Relief from any prosecution/ proceeding for penalty against the delayed filings;
- ✓ Financial relief to companies in the form of the zero penal levies/ proceedings;
- ✓ Fresh start for companies by clearing all non-compliances w.r.t. filings pending from long time.

However, where the company with back log of pending filings, decides not to avail the Scheme, such company would be subjected to the prosecutions/ proceedings of penalty by the MCA.

As it is stated in the circular that –

At the conclusion of this Scheme, the designated authority shall be taking necessary action under the CA, 2013 against the companies who have not availed this Scheme and are in default in filing their documents in a timely manner.

8. What should be the action plan of the companies for taking advantage of the Scheme?

Now, to avail the benefit of the Scheme, the companies should act vigilantly and if possible shall get the internal audit / due diligence done of the corporate secretarial department covering the scope of CA, 2013 (also covering previous laws).

With this due-diligence conducted internally or by external professionals, the companies would be able to identify the pendencies/ non-compliances, if any, under the provisions of the CA, 2013 (also covering previous laws), and can act upon to avail the benefit of the Scheme.

Further, with this due diligence, if any non-compliances are found pertaining to the provisions other than delayed or pending submissions, the companies may take preventive measures and develop their compliance management systems, to ensure timely compliances.

Author: I Kirti Dureja, Associate Partner (kirti.dureja@corpacumen.com) | **ACUMEN JURIS** |

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