

# COMPANIES FRESH START SCHEME 2020

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# Circular and Period of scheme

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- General Circular No.12/2020 dated 30.03.2020 for CFSS
- From 1<sup>st</sup> April 2020 to 30<sup>th</sup> September 2020

# Fee for Filing, etc.

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**403.** (1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee [as may be prescribed](#): Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies:

Provided further that where the document, fact or information, as the case may be, in cases other than referred to in the first proviso, is not submitted, filed, registered or recorded, as the case may be, within the period provided in the relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded as the case may be, on payment of such additional fee as may be prescribed and different fees may be prescribed for different classes of companies:

Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable.]

(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.]

# Who can file-

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All registered companies except-

- Strike off
- Under the process of Strike off
- Suo moto – Strike off application
- Amalgamated
- Dormant
- Vanishing

# What forms can be filed

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All forms (64 for Companies and 12 for LLP's) except-

- Charge forms (CHG-1, CHG-4, CHG-8, CHG-9)
- Increase in capital (Form SH-7)

# Essence of the Scheme

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- Opportunity to defaulting companies to file the forms due to be filed from Incorporation upto 30<sup>th</sup> September 2020
- Payment of only normal fee. No additional fee charged by MCA
- Get immunity Certificate for delayed filing

## Cont... What forms can be filed.

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- No prosecution/ proceedings for imposing penalty on account of delay associated in filing

However section wise default if any, shall prevail and no immunity for such violation shall be provided.

# Types of companies covered

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All companies including

- Nidhi company
- NBFC
- Foreign company; etc.

# Immunity certificate

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- Holds good for delay associated in filing
- Required form needs to be filed
- Immunity issued to the company and not for section wise defaults of the directors, KMP, etc.
- Post filing, immunity form has to be filed to the designated authority

# E-Forms covered

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In total 64 forms for CFSS:

- 54 under companies act, 2013
- 10 under companies act, 1956

For LLP in LLP Settlement Scheme, 2020

- 12 Forms covered.

# Immunity certificates pre-requisites

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- No pending appeals shall exist
- No immunity applicable if no appeal filed before the scheme coming into force
- If appeal filing last date falls between 1<sup>st</sup> march to 31<sup>st</sup> May then additional time of 120 days given to file appeal
- No pending management dispute shall exist

# Adjudication of Penalties - Section 454

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(6) Every appeal under sub-section (5) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees [as may be prescribed](#).

(7) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

(8)(i) Where a company fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

(ii) Where an officer of a company or any other person who is in default fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

# Inactive companies

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- Can file to get itself registered as dormant company
- Can file form for striking off its name

# Definition of Inactive company-

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**455.** (1) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner [as may be prescribed](#) for obtaining the status of a dormant company.

Explanation.—For the purposes of this section,—

- (i) “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;
- (ii) “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 this Act or any other law;
  - (c) allotment of shares to fulfil the requirements of this Act; and
  - (d) payments for maintenance of its office and records.

# On closure of scheme

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Designated authority shall take action against who has not availed the scheme and are in default in filing these documents

# FAQs

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- Is there any fee to be paid for filing of forms?
- Is scheme applicable for any forms filed before 1<sup>st</sup> April 2020?
- What type of companies are covered in the scheme?

# FAQs

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- What happens to already struck off companies?
- Is there any relaxation in the Scheme to help the disqualified directors?
- For LLP what is the cut-off date of the event for which the forms can be filed?

# FAQs

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- What happens if any order passed by the Adjudicating Authority?
- Private companies would have delayed filing of forms which would have resulted in losing the status of private companies.
- What happens in case all directors are disqualified?

# FAQs

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- What happens in case of Active Non-Compliant companies?
- What happens to the newly incorporated companies which has not filed the forms for commencement of business?

# FAQs

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- Is this scheme applicable for incorporation related forms?
- In case of defective form, can the form be filed again?
- Does the scheme absolve the Company or its Officers in Default from any substantial violation of law?

# FAQs

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- Applicability to CIRP Companies?
- Foreign companies can they use this scheme?
- If CSR Provisions are not followed will it help to get it covered under the scheme?

# FAQs

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- Can the immunity be given when there is any appeal pending before any court or pending management dispute?
- Can the benefit of scheme can be taken by the directors for updating / filing their KYC documents?
- Nidhi Companies can they take the benefit of CFSS?

# FAQs

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- If AGM is not held in time can immunity be given for this also?
- If you find that there is a rectification to be done in the already filed balance sheet or annual return can this scheme help ?

THANK YOU

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