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## **Company Fresh Start Scheme, 2020 and LLP Settlement Scheme, 2020**

The Ministry of Corporate Affairs (MCA) in pursuance of the Government of India's efforts to provide relief to law abiding Companies and Limited Liability Partnerships (LLPs) in the wake of COVID-19 has introduced the “**Companies Fresh Start Scheme, 2020**” and revised “**LLP Settlement Scheme, 2020**” by issuing General Circular No. 12/2020 dated March 30, 2020 and General Circular No. 13/2020 dated March 30, 2020 respectively.

Both schemes provide a one-time waiver of additional filing fees for delayed filings by the Companies or LLPs with the Registrar of Companies (ROCs) during the period starting from 1st April, 2020 and ending on 30th September, 2020.

In this note, we have covered the following schemes:-

- I. Companies Fresh Start Scheme, 2020 via circular no-12/2020 dated 30.03.2020
- II. LLP Settlement Scheme, 2020 :-
  - Key points of Original LLP Settlement Scheme, 2020 via circular no—06/2020 dated 04.03.2020 and
  - LLP Modified Settlement Scheme, 2020 via circular no-13/2020 dated 30.03.2020

### **I. COMPANIES FRESH START SCHEME, 2020 (CFSS, 2020)**

In order to facilitate the Companies registered in India to make a fresh start on a clean slate, the MCA has decided to take certain alternative measures for the benefit of all Companies by introducing CFSS, 2020.

Here are the key details of CFSS, 2020

<b>Basis</b>	<b>Particulars</b>
Tenure of Scheme	CFSS, 2020 shall come into force on 01.04.2020 and shall remain in force till 30.09.2020
Applicability	Any “defaulting Company” is permitted to file belated documents which were due for filing on any given date in accordance with the provisions of this Scheme.



	<p><b>“Defaulting Company”</b> means a Company defined under Companies Act, 2013 (“the Act”) and which has made a default in filling of</p> <ul style="list-style-type: none"> <li>- Any of Documents,</li> <li>- Any of Statement,</li> <li>- Any of Returns etc.</li> <li>- Including Annual Statutory Documents.</li> </ul>
Benefits of Scheme	<p>CFSS, 2020 provides the following benefits to Companies:</p> <ul style="list-style-type: none"> <li>a) It permits filing all pending Returns, Statements, Documents for any number of years without additional fees.</li> <li>b) No prosecution or proceedings for imposing penalty shall be initiated pertaining to any delay associated with the filing of belated return or document.</li> <li>c) Withdrawal of prosecution by ROC, if any, pending before the Court after issuing of immunity certificate by ROC.</li> </ul>
Statutory forms	<p>List of forms given here in Annexure-I are allowed under CFSS, 2020.</p> <p>Further, the following forms shall not be allowed in any case for CFSS, 2020</p> <ul style="list-style-type: none"> <li>a) Form SH-7</li> <li>b) Charge related forms i.e.CHG-1, CHG-4, CHG-8 or CHG-9</li> </ul>
Procedure for availing the benefit of this Scheme	<p>A defaulting company can avail the benefit of this scheme by complying the below given procedure:</p> <p>Step(i): withdrawal of any appeal(s) against any notice issued or complaint filed or an order passed by a court or by an adjudicating authority under the act in respect of the statutory filings for which benefit of this scheme is to be availed.</p> <p>Step(ii): File belated return or document on MCA portal.</p> <p>Step(iii): File application electronically in e-form CFSS-2020 for seeking immunity certificate along with furnishing proof of withdrawal of appeal, if any, after closure of the scheme and after the documents are taken on file or record or approved by the Registrar of Companies(ROC), as the case may be, but not after the expiry of six months after the closure of scheme.</p> <p>There is no fee for filing e- form CFSS-2020</p> <p>Step(iv): Issuing of Immunity Certificate by ROC.</p>
Effect of Immunity Certificate in respect of defaults against	<p>After granting the immunity,</p> <ul style="list-style-type: none"> <li>a) ROC shall withdraw the prosecutions, if any, pending before the Court in relation to any statutory filing, and</li> </ul>



<p>which immunity has been granted</p>	<p>b) Proceedings of adjudication of penalties under Section 454 of the Act shall be deemed to have been completed without any further action on part of ROC</p>
<p>Cases where no immunity shall be granted</p>	<p>Immunity shall not be applicable in following cases:</p> <ol style="list-style-type: none"> <li>a) Where any appeal is pending before any court of law</li> <li>b) Where there is management disputes is pending before any court of law or Tribunal;</li> <li>c) Where any Court has ordered conviction in any matter and no appeal has been preferred against such order of Court before this Scheme has come into force;</li> <li>d) Where an order imposing penalty has been passed by an adjudicating authority under the Act and no appeal has been preferred against such order of adjudicating authority before this Scheme has come into force.</li> </ol>
<p>Cases where scheme shall not apply</p>	<p>CFSS, 2020 shall not apply in following cases:</p> <ol style="list-style-type: none"> <li>a) to companies against which action for final notice in Form STK-5 for striking off the name u/s 248 of the act has already been initiated by the ROC.</li> <li>b) where Company has already filed Form STK-2 for strike off the name of Company with ROC.</li> <li>c) companies which have amalgamated.</li> <li>d) where the Company has already filed an application under Section 455 in Form MSC-1 for obtaining Dormant Status.</li> <li>e) to Vanishing Companies.</li> <li>f) For the Following Forms:             <ul style="list-style-type: none"> <li>- SH-7 for increase in authorized capital</li> <li>- Charge related form (CHG-1, CHG-4, CHG-8 or CHG-9)</li> </ul> </li> </ol>
<p>Scheme for Inactive Companies</p>	<p>The defaulting inactive companies while filing pending forms under CFSS, 2020 can apply simultaneously for followings:</p> <ul style="list-style-type: none"> <li>- Apply for obtaining the status of Dormant Company u/s 455 of the Act by filing Form MSC-1 or</li> <li>- Apply for Strike off its name from Register of ROC by filing Form STK-2 u/s 248 of the Act.</li> </ul>
<p>Special measures for the cases where order of adjudicating authority was passed but the appeal could not be filed</p>	<p>In cases where adjudicating authority has imposed penalties on Company due to delay associated in filing of any document, statement or return etc., in the MCA-21 registry and no appeal has been made by Company or its officers in default under Section 454(6) of the Act before the Regional Director before this Scheme has come into force, then the following would apply:</p> <ol style="list-style-type: none"> <li>a) Where last date of filing of appeal against the order falls between March 01, 2020 to May 31, 2020 (both days inclusive) an additional period of 120 days (calculated from the last date of filing of appeal) shall be allowed to Companies and their officers for filing appeal.</li> </ol>



	<p>b) During such additional period (as mentioned above in point (a) ) prosecution under Section 454(8) for non - compliance of the order of adjudicating authority, insofar as it relates to delay associated in filing of any document, statement or return etc., in the MCA-21 registry shall not be initiated against such companies or their officers.</p>
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**Annexure-I**

S No.	Form No.	Description of Forms
1	23C	Appointment of Cost Auditors
2	MR-2	Form of Application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors
3	ADT-2	Application for removal of auditor(s) from his/their office before expiry of term
4	NDH-2	Application for extension of time
5	DIR-3C	Intimation of Director Identification Number by the company to the registrar
6	INC-12	Application for grant of License under section 8
7	MSC-1	Application to ROC for obtaining the status of dormant company
8	DIR-12	Particulars of appointment of directors and the key managerial personnel and the changes among them
9	INC-4	Intimation for Change in Member/Nominee
10	INC-6	One Person Company – Application for Conversion
11	INC-22	Notice of Situation or Change of situation of Registered Office of the Company
12	INC-27	Conversion of public company into private company or private company into public company
13	20B	Annual Return
14	21A	Annual Return for company having no share capital
15	23B	Notice by Auditor
16	23D	Information by cost auditor to Central Government
17	23AC	Filing balance sheet and other documents with the Registrar
18	23ACXBRL	Form for filing XBRL document in respect of balance sheet and other documents with the Registrar.
19	Form 66	Form for submission of Compliance Certificate
20	AOC-4	Form for filing financial statement and other documents with the Registrar
21	AOC-4 CFS	Form for filing consolidated financial statements and other documents with the Registrar
22	AOC-4(XBRL)	Form for filing XBRL document in respect of financial statement and other documents with the Registrar
23	ADT-1	Information to the Registrar by company for appointment of auditor
24	ADT-3	Notice of Resignation by the Auditor



25	BEN-2	Return to the Registrar in respect of declaration under section 90
26	CRA-2	Form of Intimation of appointment of cost auditor by the company to Central Government
27	CRA-4	Form for filing Cost Audit Report with the Central Government
28	DPT-3	Return of deposits
29	DPT-4	Statement regarding deposits existing on the commencement of the Act
30	GNL-2	Form for submission of documents with the Registrar
31	INC-5	One Person Company- Intimation of exceeding threshold
32	IEPF-1	Statement of amounts credited to the Investor Education and Protection Fund
33	IEPF-2	Statement of unclaimed or unpaid amounts
34	IEPF-3	Statement of shares and unclaimed or unpaid dividend not transferred to the Investor Education and Protection Fund
35	IEPF-4	Statement of shares transferred to the Investor Education and Protection Fund
36	IEPF-6	Statement of unclaimed or unpaid amounts to be transferred to the Investor Education and Protection Fund
37	IEPF-7	Statement of amounts credited to IEPF on account of shares transferred to the fund
38	IEPF-5 e-verification report	Application to the authority for claiming unpaid amounts and shares out of Investor Education and Protection Fund (IEPF) – E-verification report
39	I-XBRL	Form for filing XBRL document in respect of cost audit report and other documents with the Central Government
40	MGT-7	Annual Return
41	MR-1	Return of appointment of key managerial personnel
42	MSC-3	Return of dormant companies
43	NDH-1	Return of Statutory Compliances
44	NDH-3	Return of Nidhi Company for the half year ended
45	NDH-4	Application for declaration as Nidhi Company and for updation of status by Nidhis
46	PAS-3	Return of allotment
47	SH-11	Return in respect of buy-back of securities
48	A-XBRL	Form for filing XBRL document in respect of compliance report and other documents with the Central Government
49	DIR-3 KYC/Web form	Application for KYC of Directors
50	FC-1	Information to be filled by Foreign company
51	FC-2	Return of alteration in the documents filed for registration by foreign company
52	FC-3	Annual accounts along with the list of all principal places of business in India established by foreign company
53	FC-4	Annual Return of a Foreign Company



54	INC-22A	Active Company Tagging Identities and Verification (ACTIVE)
55	INC-20A	Declaration for commencement of business
56	AOC-5	Notice of address at which books of account are maintained
57	DIR-11	Notice of resignation of a director to the Registrar
58	GNL-3	Particulars of person(s) or key managerial personnel charged or specified for the purpose of sub-clause (iii) or (iv) of clause 60 of section 2
59	INC-20	Intimation to Registrar of revocation/surrender of license issued under section 8
60	INC-28	Notice of order of the Court or Tribunal or any other competent authority
61	MGT-6	Return to the Registrar in respect of declaration under section 89 received by the company
62	MGT-10	Changes in shareholding position of promoters and top ten shareholders
63	MGT-14	Filing of Resolutions and agreements to the Registrar under section 117
64	MGT-15	Form for filing Report on Annual General Meeting

#### **Frequently Asked Questions on CFSS, 2020 :**

**1. Which types of Companies are eligible for filing belated returns under CFSS 2020?**

All Companies whether it is Private Company, Public Company, Government Company, Dormant Company, Nidhi Company, Foreign Companies etc are eligible for filing its belated returns under CFSS, 2020.

**2. Can a Company against which prosecution has been initiated and pending in Court or before Adjudicating Authority file belated returns under CFSS, 2020 ?**

Yes, such Companies can file belated return with ROC under CFSS, 2020 and After obtaining immunity Certificate, ROC shall withdraw the pending prosecutions before court or Adjudicating Authority.

**3. Can a Company which has filed an appeal against the order of Adjudicating Authority, avail the benefit of CFSS, 2020?**

Yes, but only after withdrawal of appeal and proof of withdrawal of such appeal shall be furnished by Company at the time of making application for issuing of Immunity Certificate in e-Form CFSS-2020.



**4. Can a Company against which any order has been passed by Court or adjudicating authority but no appeal has been filed by such Company till the date of introducing scheme, avail the benefit of CFSS, 2020?**

No, such Company cannot avail the benefit of CFSS, 2020.

However, in CFSS, 2020, MCA has extended the time for filing appeal for such companies. As per Circular, where last date of filing of appeal against the order falls between March 01, 2020 to May 31, 2020 (both days inclusive) an additional period of 120 days (calculated from the last date of filing of appeal) shall be allowed to Companies and their officers for filing appeal.

**5. Does CFSS, 2020 provide immunity in relation to all types of proceedings?**

No, CFSS, 2020 provides immunity only for those proceedings pertaining to delay associated with the filing of belated documents. Any other consequential proceedings, including any proceedings involving interest of any shareholder or any other person would not be covered by such immunity. Any violation in Act is not allowed for providing the immunity in relation to CFSS, 2020.

**6. Can a Company can avail the benefit of CFSS, 2020 if it has already been made a application for condonation of delay in respect to filing of statutory forms to Registrar?**

There is no such restriction imposed in the circular on companies which has been already made application for condonation of delay in respect to filing of statutory forms. Therefore, in our view, such Company can avail the benefit of this Scheme.

**7. What action can be taken by Registrar against defaulting Companies which have not availed this scheme?**

On conclusion of the Scheme i.e. after September 30, 2020 , the Registrar shall take necessary action under the Act against the Companies which have not availed this Scheme and are in default in filing of documents as required under the provisions of the Act in a timely manner.

**8. Can a Company which has been automatically struck off due to non-filing of annual documents i.e., Annual Returns avail the benefit the CFSS, 2020?**

NCLT has power to revive the Companies which are struck off by ROC. Thus, struck off Company after approaching the NCLT for reviving their Company under Section 252 of the Act and after filing order of NCLT in Form INC-28 regarding revival of Company can avail the benefit of CFSS, 2020.

**9. Whether CFSS Scheme is applicable to a foreign company having Project Office in India.**

Yes. CFSS scheme, 2020 is applicable to Foreign Companies.



**10. Is CFSS-2020 scheme applicable to subsidiary of a foreign company registered in India and foreign company itself?**

Yes.

**11. Is there any refund scheme for additional fees paid by the defaulting companies before the introduction of CFSS, 2020?**

No. CFSS, 2020 has been notified by the Ministry of Corporate Affairs in view of COVID-19, to provide Companies an opportunity to make default good, irrespective of duration of default, and make a fresh start as a fully compliant entity.

**12. Which information/documents we required to fill form for obtaining immunity certificate?**

Following information/documents are required to fill the form for Immunity Certificate:-

1. Total no of SRNs filed during the period of CFSS, 2020.
2. Date of event is required to be filled;
3. Proof of withdrawal of any appeal(s) against any notice issued or complaint filed or an order passed by a court or by an adjudicating authority under the act in relation to defaulted returns;
4. Details in respect of prosecution(s) pending against the Company and its officers in respect of belated documents filed under the scheme which requires withdrawal by the Registrar.

**13. For filing MGT-14 for the past year, do we need to apply for condonation also ?**

For filing MGT-14 beyond 300 days, condonation is required. After seeking Condonation, the Company can file MGT-14 without any additional fees. Also, for any other defaulted form (Other than Charge related Form) of past year for which condonation is required, Company is required to apply for condonation and after condonation form can file without additional fees.

**II. LLP SETTLEMENT SCHEME, 2020**

In order to promote ease of doing business, MCA has introduced LLP Settlement Scheme, 2020 by issuing a General Circular No. 6/2020 dated March 04, 2020 to give a onetime relaxation in additional fees to defaulting Limited Liability Partnerships (LLP) to make good their default by filing pending documents and to serve as a compliant LLP in future which was originally applicable from March 16, 2020 to June 13, 2020. But after introducing the below circular, this scheme has come to an end on March 31, 2020.





Further, in continuation to above circular, MCA has introduced revised LLP Settlement Scheme, 2020 by issuing a General Circular No. 13/2020 dated March 30, 2020 which is effective from April 01, 2020 to September 30, 2020.

In short, we can say that, there are two LLP Settlement Scheme, 2020:

1. Original LLP Settlement Scheme introduced on March 04, 2020- Applicable from 16<sup>th</sup> March, 2020 to 31<sup>st</sup> March, 2020 (both dates inclusive)
2. Revised LLP Settlement Scheme introduced on March 30, 2020- Applicable from 01<sup>st</sup> April, 2020 to 30<sup>th</sup> September, 2020 (both dates inclusive)

Considering the both circulars, now, we discuss the key details of revised LLP Settlement Scheme, 2020 introduced on March 30, 2020 :

<b>Basis</b>	<b>Particulars</b>
Tenure of Scheme	Revised LLP Settlement Scheme, 2020 shall come into force on 01.04.2020 and shall remain in force till 30.09.2020
Applicability	Any “defaulting LLP” is permitted to file belated documents which were due for filing till <b>31<sup>st</sup> August, 2020</b> in accordance with the provisions of this Scheme.  <b>“Defaulting LLP”</b> means a LLP registered under the Limited Liability Partnership Act, 2008 (“the Act”) and which has made a default in filling of documents on the due dates specified under the LLP Act, 2008 and rules made thereunder.
Benefits of Scheme	LLP Settlement Scheme, 2020 provides the following benefits to LLP(s): a) It permits filing all pending Returns, Statements, Documents for any number of years without additional fees. b) No prosecution shall be initiated by the Registrar against defaulting LLP(s) which have filed their belated documents till September 30, 2020 and made good the default.
Statutory forms	A defaulting LLP can file the forms given here in Annexure-II under LLP Settlement Scheme, 2020.
Procedure for availing the benefit of this Scheme	There is no such procedure for LLP for availing benefit of LLP Settlement Scheme, 2020. It has to only file its belated returns on MCA portal by paying normal fees.  Further, there is no requirement for making application for granting immunity certificate which is applicable in CFSS Scheme, 2020.
Cases where scheme shall not apply	LLP Settlement Scheme, 2020 shall not apply to LLP(s) which has made an application in Form 24 to the Registrar, for striking off its name from the register as per provisions of Rule 37(1) of the LLP Rules, 2009.

**Annexure-II**

<b>S No.</b>	<b>Form No.</b>	<b>Description of Forms</b>
1.	Form 27 LLP	Form for registration of particulars by Foreign Limited Liability Partnership (FLLP)
2.	Form 3	Information with regard to limited liability partnership agreement and changes, if any,made therein
3.	Form 8	Statement of Account & Solvency
4.	Form 15	Notice for change of place of registered office
5.	Form 11	Annual Return of Limited Liability Partnership (LLP)
6.	Form 4	Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner and consent to become a partner/designated partner
7.	Form 5	Notice for change of name
8.	Form 12	Form for intimating other address for service of documents
9.	Form 22	Notice of intimation of Order of Court/ Tribunal/CLB/ Central Government to the Registrar
10.	Form 31	Application for compounding of an offence under the Act
11.	Form 23	Application for direction to Limited Liability Partnership (LLP) to change its name to the Registrar
12.	Form 29 LLP	Notice of (A) alteration in the certificate of incorporation or registration; (B) alteration in names and addresses of any of the persons authorised to accept service on behalf of a foreign limited liability partnership (FLLP) (C) alteration in the principal place of business in India of FLLP (D) cessation to have a place of business in India

**Frequently Asked Questions on LLP Settlement Scheme, 2020 :****1. What is unique in Revised LLP Settlement Scheme, 2020 from Original LLP Settlement Scheme, 2020?**

Revised LLP Settlement Scheme, 2020 is unique from Original LLP Settlement Scheme, 2020 in following two ways:

- a) In revised scheme, there is no additional fee for belated filing of returns while in original scheme, there is additional fee of Rs. 10/- per day for delay till the default continues subject to Rs. 5000/- per document.
- b) In revised scheme, defaulting LLP can file any forms which is required to be filed by it under the Act while in original scheme, only four Forms (i.e. Form-3, Form-4, Form-8 and Form-11) are allowed.



- 2. Whether additional fee of Rs. 10 per day for delay till the default continues subject to Rs. 5000/- per documents paid under Original Scheme dated March 4, 2020 can be refunded?**

There is no circular issued by MCA regarding this, therefore, we will assume that no additional fees paid under Original Scheme can be refunded. The scheme is launched by the MCA in faith and hope for giving one time relaxation to the LLP who has default in filing the various forms. Thus, there will be no refund for the additional fees paid in reference of circular no-06/2020 dated 04.03.2020.

- 3. What action can be taken by Registrar against defaulting LLP(s) which have not availed this scheme?**

On conclusion of the Scheme i.e. after September 30, 2020 , the Registrar shall take necessary action under Act against the LLPs which have not availed this Scheme and are in default in filing of documents as required under the provisions of the Act in a timely manner.

- 4. Is there any Form for immunity Certificate like Company Fresh Start Scheme, 2020?**

No. There is no requirements for LLPs to file any form which have availed the benefit under LLP Settlement Scheme.

- 5. Can a LLP with Under Strike off or “defunct” Status after restoring its name can avail LLP Settlement Scheme, 2020 (Scheme)?**

Although the Scheme shall not apply on the LLP which has made an Application with ROC for strike off the LLP but if Form 24 is not yet approved, LLP may approach the jurisdictional ROC to ‘reject’ the form so that status of LLP gets marked to ‘Active’ and relevant filings can be made.

- 6. If a LLP violate any section of the Act because of which it attract punishment, Can such LLP avail the Scheme?**

No. Scheme is available only for the filing of belated form till 31<sup>st</sup> August, 2020. Any violation of law in relation of law is not covered under the Scheme.



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**Disclaimer:-**

The FAQs are some of the questions that we frequently get asked in some (but not all) of the areas in which we practice. The questions and answers are not intended to be exhaustive and do not constitute legal advice for your particular question, issue or concern. Moreover, we encourage you to contact us to dialog further on your issues or areas of interest.