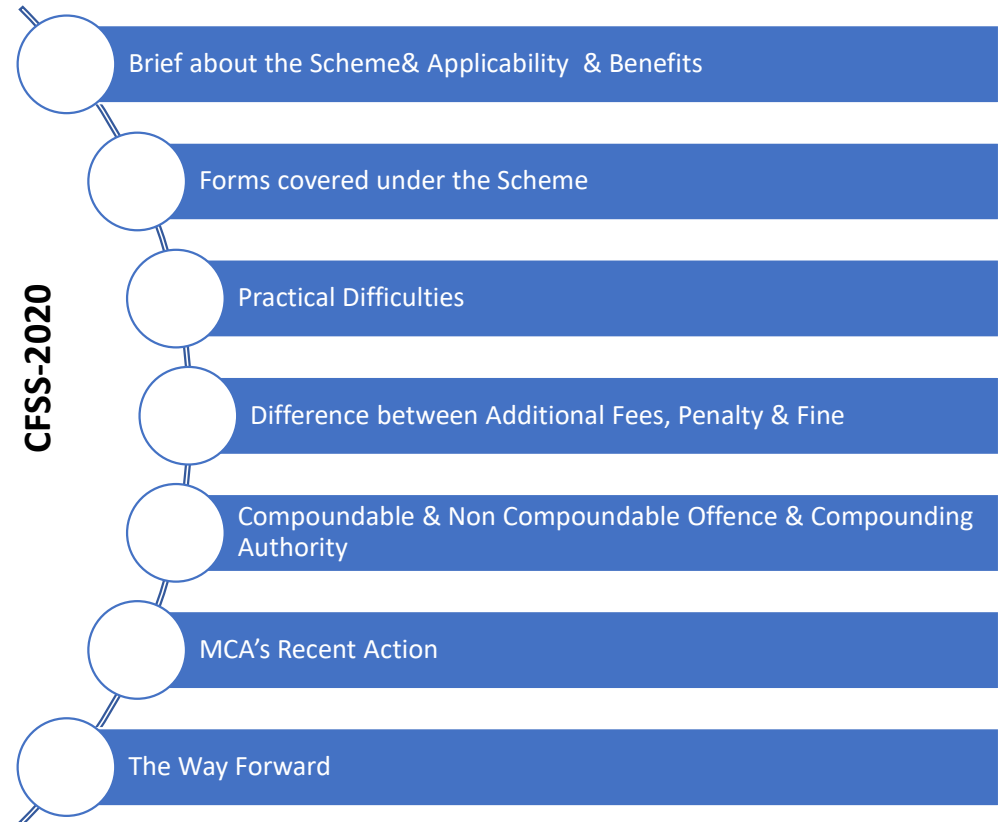
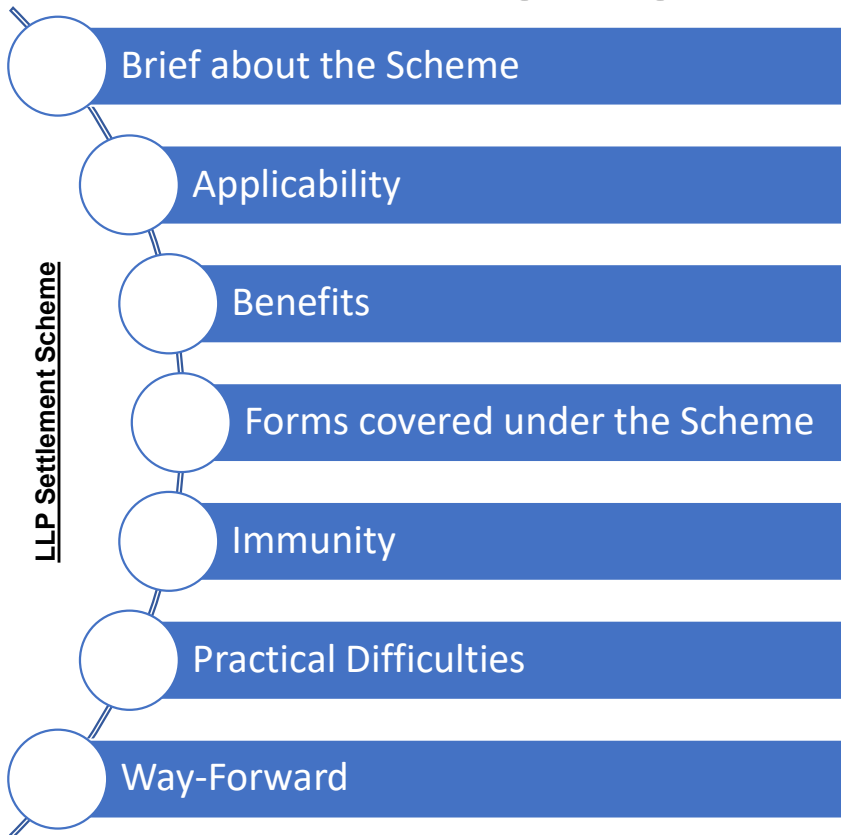


Companies Fresh Start Scheme (CFSS) 2020 & LLP Settlement Scheme 2020

Practical Aspect & The Way Forward

CS Sandeep Parekh
Practising Company Secretary

Highlights of the Presentation



PART-A

LLP Settlement Scheme 2020

1) **Applicability: -**

All LLP as defined and registered under the Limited Liability Partnership Act, 2008.

MCA has issued Four circulars on this matter as follows:

- 1st MCA Circular No Gen.Cir-6/2020 dated 4th March 2020 wherein defaulting LLP allowed to file belated documents which are due for filing till **31st October 2019**. The period of Scheme was from 16th March 2020 to 13th June 2020.
- 2nd MCA Circular No 13/2020 dated 30th March 2020, wherein defaulting LLPs were allowed to file belated documents which were due for filing till **31st August 2020** under LLP. The period of Scheme was extended from 1st April 2020 to 30th September 2020.
- 3rd MCA Circular No 30/2020 dated 28th September 2020 the scheme extended till **31st December 2020** (from 1st April 2020 till 31st December 2020)
- 4th MCA Circular No 37/2020 dated 9th November 2020, the due date for filing belated documents (due date) was extended from 31st August 2020 till 30th November 2020.

2) Benefits:

A much awaited and First time ever in the history of LLP, an Amnesty Scheme for LLP was introduced by the MCA.

Additional Fees of Rs.100/- per day **without any upper limit** was bring to Rs.10 per day **maximum up to Rs.5000 per return.**

•**Forms covered:**

Name of Form	Purpose
LLP Form -3	Information with regard to Limited Liability Partnership agreement and changes, if any, made therein.
LLP 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
LLP – Form – 5	Notice of Change of Name
LLP – Form 8	Statement of Accounts & Solvency (Due Date 31 st October every year)
LLP – Form 11	Annual Return (Due Date 30 th May every year)
LLP- Form 15	Change of Address
	These are just an example for discussion. Full list of form is available on MCA

3) Practical Difficulties:

- Most of the LLPs are incorporated for quick start and to avoid Compliance of Private Limited Companies.
- However, after Incorporation of LLP, Form 3 is either not prepared OR Not filed.
- Without filing of Form LLP-3 you can not file Form 8 and Form 11
- Further, without filing of Form 3, Form 8 and Form 11, LLP cannot be closed.
- In case of any change in partner or DP, Form 3 and Form 4 is mandatory, without which correct name of DP or Partners will not be updated.

4) Payment of Fees under the Scheme:

The defaulting LLPs may file all pending forms with an additional Fees of Rs.10 (Ten) per day instead of Rs.100 per day.

The **maximum filing fees shall not exceed Rs.5000** per document.

5) Immunity from Prosecution:

- The defaulting LLPs which have filed documents, shall not be subject to any prosecution by the ROC.
- Unlike CFSS, there wont be any certificate issued by the ROC for filing belated documents/ return under LLP settlement Scheme 2020.

6) What if defaulting LLP do not avail benefit of LLP Amnesty Scheme:

- MCA Circular says that ***“on conclusion of the scheme, the Registrar shall take necessary action under LLP Act 2008 against the LLP under default”***
- These defaulting LLPs may face legal action from MCA in near future.

PART - B

CFSS-2020

Date of Commencement: -

- a. CFSS started from 1st April 2020 to 30th September 2020 (General Circular No 12/2020 dated 30th March 2020)

- a. Further extended till 31st December 2020 vide General Circular No 30/2020 dated 28th September 2020.

Benefits: -

- a. No separate filing for Condonation of Delay required.
- a. Granting Immunity from launching Prosecution or proceedings for imposing penalty on account of delay filing.
- a. Only Normal filing fees - No additional fees during the course of CFSS.

Applicable:

a. All Companies

i. Except in following cases:

1. Where the action for final notice of striking off the name as per the Companies Act, 2013 has already been initiated by the Designated Authority.
2. Where the company has already filed the Form STK – 2 along with the prescribed fees for the striking off of the name of the company from the Register of Companies
3. Where the companies have been amalgamated under the scheme of arrangement or compromise.
4. Where the application for Dormant Status has been filed by way of Form MSC – 1 along with the prescribed fees.
5. Vanishing companies.
6. Companies that are marked for the Corporate Insolvency Resolution Process or Liquidation.
7. Filing of forms related to Increase in the Authorised Capital (Form SH – 7) – Charge related documents (CHG – 1, CHG – 4, CHG – 8, CHG – 9)

Forms covered under CFSS 2020:

No	Name of some Form	Purpose
1	Form 20B, Form 23ACA, Form 23ACA, Form 66, Form 23B	Annual Filing, Auditor Appointment
2	INC 20A	Commencement of Business
3	INC 22	Change of R.O
4	ACTIVE (INC 22A)	ACTIVE Compliance
5	INC 28	Order of Tribunal, Court
6	PAS-3	Return of allotment
7	DPT-3	Return of Deposit
8	MGT-6	Beneficial owner u/s 89
9	MGT 7, AOC-4 & AOC 4- XBRL	Annual Filing
10	MGT-14	Filing of certain resolutions u/s 117
11	AOC-5	Maintenance of books of account other than R.O
12	ADT-1, ADT-2 & ADT-3	Appointment – Removal and Resignation of Auditors
12	DIR 11 & DIR 12	Appointment, resignation or change in designation of directors
13	FC-1, FC-2, FC -3 & FC-4	Returns of Foreign Company – Accounts or Change of constitution
14	BEN-2 - SBO	Declaration under Section 90
15	GNL-2	Submission of documents with ROC
16	IEPF 1 to IEPF 7	Application to IEPF to statement etc

These are only few forms; a complete list of forms is available on MCA.

1) **Practical Difficulties:**

a) **STRUCK-OFF Company:**

CFSS is not applicable for the Company which are Struck-off by the ROC due to non-filing of returns.

Further the Directors of such defaulting Struck-off Companies are also Dis-Qualified for 5 years and sometimes, such Dis-Qualified Directors are also a director in other Active Companies whose return are pending.

Possible Solution:

Filing of application with NCLT and revival of Company. However, considering the timeline, this is very challenging if someone wants to initiate the process now.

b) DIS-Qualified Directors:

Most popular situation nowadays, where a dis-qualified director is also a director of some active Company, but due to his/her dis-Qualification, returns of Active Companies are PENDING.

Important to note that as per provision of **Section 167(2)** of Companies Act, 2013, **If a person, functions as a director even when he knows** that the office of director held by him has become vacant on account of any of the **disqualifications** specified in subsection (1), he shall be **punishable** with fine which shall **not be less than one lakh** rupees but which may **extend to five lakh rupees**.

- Stuck-off Company continues to operate business, files return with Income Tax.
- Operate Bank Account (if not freeze)
- Sale/transfer asset of Company etc..

Possible Solution:

Appoint new directors under Section 167 of the Companies Act, using back-end process of ROC (Physical filing of documents for appointment of TWO directors), as follows:

Appointment of Director – Back-end

APPLICATION FOR BACKEND APPOINTMENT OF DIRECTORS UNDER SECTION 167 (3) WITH APPROVAL OF CENTRAL GOVERNMENT OF COMPANIES ACT, 2013.

Please ensure :-

- application / covering letter for backend addition of directors is signed by promoters /shareholders /members of the company.
- The status of the company is active as per the master data of the company.

Attachments with the application :-

Documents pertaining to Extra Ordinary General Meeting(EOGM) :-

- i. Notice of EOGM,
- ii. Copy of Explanatory Statement attached with notice of EOGM.
- iii. In case notice of less than clear 21 days is given to members for EOGM, consent of members for shorter notice under section 101 (1)(ii) to be attached.
- iv. Certified copy of the resolution passed by members at said EOGM for the appointment of new directors by backend. (on letterhead of company).
- v. Certified copy of the minutes of the EOGM held by the Company.

Disqualified Directors :-

- i. Certified copy of List of Disqualified Directors of the company.
- ii. NOC from all Disqualified Directors regarding appointment of all new directors.

Shareholding Proof :-

- i. Letter addressed to ROC (on letterhead of practicing professional) along with list of Shareholders or registered members, Share Certificate nos., and shares held by member or shareholder with percentage of shareholding. The said letter to be duly certified by professional with his Membership Number.
- ii. The copy of said share certificates duly certified by practicing professional to be attached serially.
- iii. A certificate from the professional stating that they have verified the Register of members and records and certified that the applicant are majority of shareholders.

Details of New Directors :-

- (i) Letter of Appointment issued to new directors (Issued by the promoter shareholder/ Registered Members).
- (ii) DIN status of new directors.
- (iii) Form MBP 1 - Notice of interest by director.
- (iv) Form DIR-2 - Consent to act as a director of the company.
- (v) Form DIR-8 - Intimation by Director (Appointment and Disqualification)
- (vi) Form DIR-12 along with Challan. Digitally filled in DIR 12 by the Professional for all the new director(s) along with request fee if any and additional fees paid through miscellaneous challan. The date of EOGM to be mentioned as date of appointment of the new directors. The Declaration should be digitally signed by one of the new director and practising professional also.
- (vii) Self attested or duly certified copy of the identity proof and address proof of the new directors. (Aadhar Card, passport etc.)
- (viii) Individual Affidavit (on Rs.100 stamp paper) from all the new directors duly notarized declaring that they are not disqualified and not convicted by any court of law and also stating that all filings will be done upon addition of new directors.
- (ix) Print out of 'View director master data' from MCA website.

c) Non-Filing of ACTIVE Compliance:

Filing of ACTIVE Form was made mandatory for all companies under Rule 25A of Companies (Incorporation) Rule 2014 w.e.f. 25th February 2019 which requires all Companies to file a form ACTIVE showing detail of

- All Directors (in-active or Dis-Qualified Directors' detail wont be accepted)
- Appointment of Statutory Auditors
- Cost Auditor, if applicable
- Detail of MD, CEO or CFO of the Company
- ***Details of Company Secretary of Company***

There are few companies having paid-up Capital of Rs.5 crore or more, could not appoint Company Secretary and due to which the form could not be filed.

However, the limit of Paid-up Capital of Rs.5 has been raised to Rs.10 Crore and a Company having paid-up capital above 5 Cr but below 10 Cr, can file ACTIVE form if pending and can complete the pending compliance under the CFSS Scheme.

d) De-Activate DIN-

DIN KYC is mandatory for all directors every year and in case a director fails to complete DIN KYC, his/her DIN will be De-Activated.

It's a simple process and can be done quickly based on the OTP verification (unless any change in directors' detail, Web-DIN KYC can be done. Otherwise DIR-3-KYC form is to be fill-up and file with MCA with supporting documents of changes)



Way
Forward

Filing of Form CFSS 2020 and obtaining immunity certificate from MCA:

- As per the MCA Circular, upon completion of CFSS, a separate form called CFSS 2020 will be deployed.

- An application seeking immunity in respect of **belated documents filed under CFSS Scheme** is to be filed online **within SIX months from the closure of CFSS scheme**.

- Application in form CFSS 2020 is to be filed along with:
 - List of all documents filed under Scheme
 - Date of event of each form
 - SRN of each form filed
 - Date of event & date of filing
 - Nominal fees paid under CFSS
 - Confirmation that there is no Management Dispute
 - Confirmation that no prosecution pending against the director/ company
 - Board Resolution authorising a director to submit the CFSS application.

Obtain Certificate of Immunity from ROC for filing under CFSS-2020:




- ROC will issue Certificate of Immunity to the Company mentioning SRN and list of forms for which filing has been made under CFSS Scheme and immunity has been sought through filing Form -CFSS 2020
- **Make sure you mention all forms filed during CFSS-2020 otherwise immunity certificate for that particular form will not be issued.**
- **ROC will issue Immunity Certificate for the list of form mentioned in form CFSS 2020 and there cannot be any Prosecution or penalty on such forms.**

What if Company is under default and not availed benefit of CFSS 2020

- In case Company is under default of filing documents with MCA as required under various provision of the Companies Act (old & new both), as per the MCA Circular – it says that ***“Designated Authority shall take necessary action under the Act against the Companies who have not availed this scheme and are in default in filing these documents in a timely manner.”***
- You can see few Companies who are under default of filing returns AND still ACTIVE on MCA portal, just because charge is OPEN.
- There are few Companies where due to management dispute (except matter pending from NCLT) are not filing returns.
- These Companies will face more strict legal and penal action from MCA in near future.

Difference between Immunity from payment of additional Fees V/s Penalty for Violation:

- The CFSS Scheme provides immunity from payment of additional fees during the scheme.
- However, violation of provision of the Act, if any, shall continue and one has to check whether its compoundable offence or Non-Compoundable offence and accordingly it should be treated and applied separately. For eg:
 - Company **fails to file Annual Accounts** with MCA for last few years say for 31.3.2018 or 31.3.2019
 - The Statutory Auditors will issue report & sign balance sheet in current dates, current year i.e. 2020
 - It means, the Company has not conducted AGM for those respective years and it's a violation of Section 96 – Holding of AGM for which penalty under Section 99 is as follows:
 - *company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues*

Additional Fees	Penalty	Fine
Challan Generates automatically from MCA as per the no of days delay	Levied by the respective authority as a settlement of default, once an application is filed for the default/non-compliance of certain provision of the Companies Act, 2013	Through Companies (Amendment) Act, 2019 w.e.f. 31 st July 2019, majority of the provision of CA 2013 were amended and penalty was provided instead of Fine/Imprisonment. However in case of non-compoundable offence or criminal offence, the authority can levy a fine.
Its always confusing. Let's understand with a simple example of car parking.		
		
If you park your car beyond certain time – you have to pay additional parking charges	If you park at No-Parking – your car will be towed and you have to approach nearby traffic control office, explain, negotiate and pay the PENALTY	God forbid, if you rush your car on any person, you will be fined like Salman Khan (popular case).

- **A List of routine Non-Compliance or violations:**

- Non- maintenance of Statutory Register/ Minutes Book
- Violation of Deposit Rule eg:
 - *Borrowing loan from a person other than director & their relatives*
 - *Advance from customer morethan 365 days.*
- Granting Loan to other person/Company without interest.
- Inter Company Loan – without passing special resolution under Section 185 (*Common Directors involved*)
- Default or Delay in Filing of Return/Documents with MCA
- Non Filing of ADT-1 – Appointment of First Auditor after Incorporation.
- Non-Holding of Meeting or Delay in Holding Meetings
- Non-Disclosure or In-adequate Disclosure on the Letterhead of Company._(Section 12)
- Non-Preparation of Financial Statement as per prescribed format.
- Utilisation of Share Application Money without filing PAS-3 etc..

- **Check – whether the violation/ offence is Compoundable or Non-Compoundable:**

- **What is Compounding:**

- It means the offender (Company/Director/(both)) prays for settlement of violation by filing an application with the Compounding authority and pay the penalty as mentioned under the respective sections of the Companies Act, 2013.
- Under Compounding, the offender avails an option to pay money in lieu of his prosecution, thereby avoiding a prolonged litigation.

- **What is Compoundable Offence:**

- Any offence which is punishable with fine or penalty only under the specific section of the Companies Act, 2013 is compoundable offence.

- **What is Non-Compoundable Offence:**

Any offence which is punishable with imprisonment only or with imprisonment and fine or penalty only under the specific section of the Companies Act, 2013 is non-compoundable offence.

Lets see some
of the
Opportunity/
Action taken
by MCA
in recent past



1) Notice for Defaulting Companies under Section 137/92/96 during early 2017

During end of 2016 and early 2017, MCA has sent notice (by email) to various defaulting Companies, wherein it was mentioned that if no reply is received within 10 days, MCA will proceed for launching prosecution.

However, its assumed that due to lack of administrative strength, only few Companies faced prosecution notices and then that action was not proved effective, which probably has triggered the requirement to amend the Act and resulted in Companies (Amendment) Act 2019

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF REGISTRAR OF COMPANIES, MUMBAI, MAHARASHTRA
100, EVEREST BUILDING, MARINE DRIVE, MUMBAI

Ref. No.: ROC/PVT/DEF

NOTICE FOR DEFAULT UNDER SECTION 137/92/96 OF THE COMPANIES ACT, 2013
..... PRIVATE LIMITED U50500MH1995PTC087085

Date: 18th February. 2017

1. Whereas the above named company ought to have held its Annual General Meeting in respect of the Financial Year ending 31.03.2015 in terms of section 96 of the Companies Act, 2013 herein after referred as to as the Act.
2. Whereas an Annual Return made up to 31.03.2015 in accordance with the section 92 of the Act should have been filed on or before 30.11.2015.
3. Whereas the Directors/officers of the above named company ought to have laid the Balance Sheet and Profit and Loss Account for the Financial Year ended 31.03.2015 in the Annual General Meeting held on or before 30.09.2015 in accordance with section 129 of the Act.
4. Whereas the said Annual Return & Balance Sheet and relevant Profit & Loss Account for the financial year ended 31.03.2015 should have been filed within 60 days and 30 days after the said documents were so laid in Annual General Meetings in accordance with the provisions of sections 92 and 137 of the Companies Act, 2013.
5. Whereas the Directors/Officers of the above named company ought to have held its Annual General Meeting and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one Annual General Meeting in accordance with section 96 of the Companies Act, 2013.
6. And whereas the default is made for not holding Annual General Meeting in accordance with section 96 and under section 99, the Company and every Officer who is in default, shall be punishable in the norms laid down in section 99 of the Act.
7. Whereas the said Annual Returns & Balance Sheets have not been filed so far and the undersigned has reasonable cause to believe that the aforesaid provisions of the Act have not been complied with.
8. Now, therefore the addresses (being the company or its Directors/Officers as the case may be) is hereby called upon to show cause as to why action should not been taken for prosecution under section 92, 99, 137 for contravention of section 92, 96 and 137 of the Act respectively.

Please take notice that if no reply is received & or cause shown within 10 days from the date of issue of this notice, necessary prosecution against the addressee shall be launched in the Hon'ble Court of Learned ACMM.

This notice will also be treated as Show Cause Notice for **defaults in filing of Balance Sheets and/or Annual Returns for any previous year**, if any.

A copy of this notice maybe served on all the Directors, Company Secretaries and Officers in default of the company for each year of default as per provisions of section 20 of the Companies Act, 2013. Company is requested to bring the notice in knowledge of its officers who were in default immediately upon its receipt

This notice is being served electronically on the Company pursuant to section 20 (1) of the Companies Act, 2013.

Your attention is invited to the provisions of Section 441 of the Companies Act, 2013 for compounding of the said offence. If all annual filling is done by the company and data is not reflecting on the MCA site, please contact in ROC Office and inform us the same.

Sd/-
TRUPTI SHARMA
Asst. Registrar of Companies, Mumbai, Maharashtra

2) Condonation of Delay Scheme 2018 (“CODS”)

- CODS was introduced in December 2017 effective from 1st Jan 2018 till 31st March 2018 (extended till 30th April 2018) (further extended till 1st May 2018 due to public holiday)
- DIN of Dis-Qualified Directors of the defaulting Companies were temporarily activated for filing overdue documents with MCA.
- Defaulting Companies were allowed to file pending/overdue returns with MCA
- Dis-Qualified Directors of such defaulting Companies were required to file e-form CODS with a payment of Rs.30,000 as CODS fees.
- Those Dis-Qualified Directors availed this scheme, their name were removed from Dis-Qualification list after completion of Scheme and after filing of e-form CODS.

3) Dis-Qualification of Directors: (Part One in 2017 and Sequel in 2019)

- ✓ First time in the history of Companies Act (1956 & 2013) – after approx. 60 years MCA triggered the provision of Dis-Qualification which was available since day 1, however never used it.
- ✓ Result of this “**BHRAMHASTRA**” approx. 4 lacs directors were Dis-Qualified

And since then MCA is in ACTION and Unstoppable!!...

Impact of Companies (Amendment) Act 2019 :

By introducing Companies (Amendment) Act 2019, majority of the provisions where fine/imprisonment was provided was replaced with **penalty**. The possible impact of this amendment could be as follows:

- MCA started from the year 2006 and its now almost 15 years, hence huge data is available with MCA now.
- There are various penalty prescribed under the various provisions of Companies Act, 2013 & Companies Rule 2014, however due to “FINE” mentioned earlier, the entire system was driven under judicial process, which is time consuming.
- Since most of the offence under Companies Act are Non-Criminal in nature, it was neither feasible nor in the interest of business community, hence “FINE” was replaced with “Penalty”
- Now, it is expected that after this “JOURNEY ON FREE-WAY” there could be a “TOLL-Plaza” ahead!
- MCA is upgrading its software regularly and in near future, through use of software and system, MCA can send SCN (Show Cause Notice) for various violations.
- Forms like DPT, MSME, ACTIVE gives hands-on data to MCA
- The most of the penalty provided under Companies Act are within the jurisdiction of Regional Director.
- It is expected that MCA will start sending SCN to the defaulting Companies/ professional (if required)

*** * * Compounding Authority * * ***

a) NCLT:

Any offence where the amount of penalty imposed is **above Rs.25,00,000/-** can be compounded by NCLT only.

b) RD (Regional Director)

Any offence where the amount of penalty imposed is **below Rs. 25,00,000/-** can be compounded by RD.

**** Procedure of Compounding ****

Procedure to compound an offence under Companies Act, 2013:

a) Holding of Board Meeting:

- The Board to take on record, violation or non-compliance and decision of compounding the same.
- Calculate the amount of offence Board will calculate the amount of the penalty as per the relevant section.
- Pass a resolution to file application with authority for compounding of offence
- authorize director of the Company and for preparation and signing of documents including application.
- Company will authorize any professional for appear, submission, follow up etc on behalf of the Company with the authority/dept.

b) Preparation of Compounding Application:

- An application is to be prepared and filed by the Company AND all Directors (unless Company have a managing Director)
- Separate Applications is to be filed for Company and Directors for the offence to be compounded.
- Application for compounding shall be submitted electronically in **eform GNL1**. This form will be forwarded by ROC to NCLT/Regional Director as applicable. Along with prescribed a fee of **Rs, 1,000/-** on an application for compounding of certain offences.
- In GNL – 1, the application can be filed for Company, Director or Manager/Secretary or CEO/CFO or other officers of the Company (even jointly). Details of only 8 persons can be entered in the e Form. If number of persons is greater than 8, then additional details can be provided in optional attachment.

c) Hearing before Authority.

The NCLT/Regional Director will give personal hearing and then pass a speaking order giving reasons. The hearing can be attended by Director/secretary/officer of Company or by authorized representative like practicing CS/ CA/ CMA.

Penalty levied can be paid online and Challan along with covering letter to be submitted to the office of RD/NCLT for obtaining written order. **Please note that written order will be issued only after payment of Penalty.**

Q & A

Thank you

CS Sandeep Parekh

Sandeep P Parekh & Co

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