

Co Law Settlement Scheme, 2010 for defaulting companies

Ministry of Corporate Affairs (MCA), Government of India has on 26 May 2010, introduced a “Company Law Settlement Scheme, 2010” (CLSS) under the Companies Act, 1956 (the Act). The objective of CLSS is to give an opportunity to defaulting companies to enable them to make their default good by filing belated documents and to become a regular compliant in future. CLSS would condone the delay in filing documents with the Registrar of Companies (ROC), grant immunity from prosecution by levying additional fee of 25% of actual additional fee payable for filing belated documents under the Act and the rules made there under.

The salient features of CLSS are as under:

Meaning of Defaulting Company

“Defaulting company” has been defined to mean –

- a company registered under the Act; and
- a foreign company covered under section 591 of the Act

which has made a default in filing of documents on the due date specified under the Act and rules made there under.

Operative period of CLSS:-CLSS is operative from 30 May 2010 till 31 August 2010.

Companies eligible to avail CLSS

- Any “defaulting company” is permitted to file belated documents in accordance with CLSS.
- Defaulting private company or public company existing on 13 December 2000 which has not increased its paid capital to the prescribed minimum limit of Rs. 100,000 or Rs. 500,000 respectively, are first required to increase it’s paid up capital to the said prescribed minimum limit before they could avail of the benefits under CLSS.

Ineligibility under CLSS

CLSS cannot be availed under following situations:

- Filing of documents for incorporation or establishment of place of business in India (by a foreign company under section 592); or
- Where specific order for condonation of delay or prior approval is required to be obtained from the Company Law Board / Central Government / Court / any other competent authority under the Act; or
- Defaulting company which has filed any appeal against any notice issued (or) complaint filed before the competent court for violation of the provisions under

- the Act in respect of which application is made under CLSS, unless such appeal has been withdrawn; or
- Companies against which action under Section 560 (5) of the Act has been initiated by the ROC to strike off its name.

The Circular issued by the Government contains the procedure to be followed to obtain the benefits under CLSS including immunity from prosecution under the Act.

Conclusion

- CLSS is a welcome step by MCA aimed to give an opportunity to defaulting companies to enable them to regularize their past default and seek immunity from prosecution under the Act by filing belated documents on payment of additional fees.

Source: General Circular No. 1 /2010 dated 26 May 2010 issued by MCA

Easy Exit Scheme, 2010 for “defunct companies” under the Companies Act, 1956

Easy Exit Scheme, 2010” (EES) under the Companies Act, 1956 (the Act) to provide a fast track exit for “defunct companies” to get their names struck off from the records of the Register of Companies (ROC). The salient features of the scheme are as under:

Operative period of ESS:-ESS is operative from 30 May 2010 till 31 August 2010.

Companies eligible to avail ESS

- A “defunct company” which has active status (for e-filing) on MCA portal can apply under EES. “Defunct company” has been defined to mean a –company registered under the Act which is not carrying over any business activity / operation on or after 1 April 2008 and includes a private company or public company existing on 13 December 2000 which has not raised its paid up capital to Rs. 100,000 or Rs. 500,000 respectively, being the minimum stipulated capital prescribed under the Act.

Brief procedure for availing ESS

- Companies desirous of taking benefit of ESS need to make an application to ROC in the prescribed form.
- The application need to be accompanied by the following documents / information:
 - Affidavit to the effect that the company has not carried on any business since incorporation (or) that the company did some business for a period

- upto a certain date and then discontinued its operations and has not carried on any business after the 1 April 2008;
- Indemnity bond from all directors that losses, claim and liabilities on the company will be met in full by them director (individually or collectively) even after company name is struck off by ROC;
 - Statement of Account not older than 1 month preceding the date of filing of application under EES duly certified by a statutory auditor or practicing Chartered Accountant;
 - Disclosure of pending litigation, if any;
 - In case of Government Company, copy of no objection certificate from concerned administrative ministry / department / state government.
- If the application is in order, the ROC will give a notice to the applicant through e-mail to show cause within 30 days for not striking off the name of the company.
 - ROC shall intimate RBI or SEBI if a Non-Banking Financial Company or Collective Investment Management Company, respectively has availed EES.
 - ROC shall intimate details of companies that have applied under EES to income tax department to raise their objection, if any, within 30 days.
 - ROC shall upload details of companies making application under EES on its portal www.mca.gov.in, on a daily basis, giving 30 days time to stakeholders for raising objection, if any.
 - ROC after following the prescribed procedure if satisfied shall strike off the name of the company from its record and publish the same in the official gazette and on such publication company shall be deemed to have been dissolved.

Companies ineligible under ESS

Following companies are not eligible to apply under ESS:

- Listed companies
- Section 25 Companies i.e. companies which are formed pursuant to a license and which cannot pay any dividend to its members
- Vanishing companies i.e. a listed company which has failed to file its returns with ROC and Stock Exchange for a consecutive period of 2 years, and is not maintaining its registered office at the address notified with ROC or Stock Exchange and none of its Directors are traceable.
- Companies –
 - where inspection or investigation is in process against which order under Section 234 of the Act has been issued by ROC and reply is pending or where prosecution if any, is pending in a court
 - against which prosecution for a non-compoundable offence is pending in a court
- Companies which have accepted public deposits which are either outstanding or the company is in default in its repayment
- Company having secured loan
- Company having management dispute

- Company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority;
- Company having dues towards income tax, sales tax, central excise or banks / financial institutions or government / local authorities.

Conclusion:-EES is a welcome step by MCA aimed to provide for an easy exit for the “defunct companies” without following the winding-up process which is very lengthy.

Source: General Circular No. 2 /2010 dated 26 May 2010 issued by MCA.