



President Hon. Jt. Secretaries
Anish Thacker Hareesh Kenia | Neha Gada

Vice President Hon. Treasurer Imm. Past President
Ketan Vajani Parag Ved Vipul Choksi

Date: 14th August, 2020

To,
Shri Rajesh Verma, IAS
Secretary
Ministry of Corporate Affairs
Government of India
Dr. Rajendra Prasad Road
Shastri Bhawan
New Delhi 110001

Subject:-Request for relief for certain matters under the Companies Fresh Settlement Scheme, 2020 and Clarification on Scheme for relaxation of time for filing of charge related forms

The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of the oldest voluntary non-profit making organizations in Mumbai formed with the object of educating and updating its members on Tax and other Laws. It has robust membership strength of about 4000 professionals, comprising Advocates, Chartered Accountants and Tax Practitioners. The Chamber also has created a niche with the Government and other regulatory agencies, where representations by the Chamber are received with all seriousness and continues this commitment since more than 90 years now.

It is appreciated that the Ministry of Corporate Affairs (MCA) vide circular No. 11/2020, dated March 24, 2020 and further circular No. 12/2020 dated 30th March, 2020 introduced **Companies Fresh Settlement Scheme, 2020 ('CFSS Scheme' or 'the Scheme')**. The said scheme is applicable for the period from April 1, 2020 to September 30, 2020.

The said scheme provides an opportunity to the defaulting company to make a fresh start by filing forms & related documents beyond their specified due dates without imposition of additional fees. The scheme also provides immunity from the initiation of prosecution and proceedings for imposing penalty on account of delay in filing documents.

1. Relief No.1 – Immunity for companies which have filed any e-form before introduction of this scheme

1.1 As per the above-mentioned MCA Circular dated 30th March 2020, Corporates can avail immunity from launch of prosecution under this scheme, for the e-forms (listed by MCA) filed during the period of this Scheme, i.e., from 1st April 2020 to 30th September 2020.

1.2 E-forms which are filed prior to the start of this Scheme cannot avail immunity from launch of prosecution under this Scheme even though additional filing fees has already been paid on such e-form

1.3 The companies which have filed these e-forms with additional filing fees came forward to make themselves compliant much prior to introduction of this Scheme. Such companies are at a disadvantage as compared to other defaulting companies who did not bother to make themselves compliant. Such defaulting companies will enjoy immunity under the Scheme, however Companies which endeavoured to comply with the filing provision along with payment of additional fees will not enjoy immunity from prosecution.

1.4 Considering the above situation, we request your good office to:

1.4.1 Allow even companies which have filed any such e-form along with additional fees prior to the launch of the Scheme to avail immunity under the Scheme. This will give such Companies the benefit of immunity from prosecution and proceedings from imposition of penalties. This will help the Government propagate as well as achieving the Main Goal of the Scheme i.e. allowing Companies make a Fresh Start..

2. Relief No. 2– Relaxation/moratorium for Filing of e-form MGT-14 where event date is beyond 300 days

2.1 Prior to the amendment effective from May 7, 2018, Section 403 of the Act restricted filing of e-Form MGT-14 beyond a period of 300 days, without the approval for condonation of delay from Central Government. This approval was sought from the Central Government in Form INC-28. The SRN (Challan number) of the approved Form INC-28 was required to be filed in e-Form MGT-14 without which the e-Form MGT-14 could not be filed.

2.2 However, now post the above stated amendment to Section 403 of the Act, MGT-14 can be filed without the need for approval for condonation of delay. Hence, as consequence, e-Form MGT-14 had to be amended so as to remove the need for providing SRN of approved Form INC-28. This amendment, unfortunately has yet to take place.

2.3 Now, under this CFSS 2020 Scheme also, due to the above-mentioned technical reason, e-Form MGT-14 whose event date is beyond 300 days cannot be filed without undergoing the process of Condonation of Delay.

2.4 Since, the e-form MGT-14 is not modified pursuant to the amendment in Section 403 of the Act, companies are not able to file e-form MGT-14, where event date is beyond 300 days, under the CFSS Scheme, without seeking seeking approval for condonation of delay from the Central Government, which is no longer required under the Act.

2.5 Considering the above situation, we request your good office to modify the e-Form MGT-14 to allow its filing even in cases where event date is beyond 300 days, as this is an e-form which is otherwise allowed to be filed under the CFSS Scheme.

3. Relief No. 3 – Covering e-form MSME Form I under CFSS Scheme

3.1 MCA has vide its circular dated 24th March 2020 provided a relief period from 1st April 2020 to 30th September 2020, for filing of any document, return, statement etc., required to be filed with the MCA Registry, irrespective of its due date, for reducing the compliance burden of companies / LLPs, to support and enable companies / LLPs to focus on taking necessary measures to address the COVID-19 threat, including economic disruptions caused by it.

3.2 The circular specifying detailed requirements in this regard was issued on 30th March 2020 which announced the Company Fresh Start Scheme, 2020. Thereafter, MCA released the list of e-forms on which, if filed between 1st April 2020 to 30th September 2020, no additional fees will be levied, i.e., the e-forms mentioned in this list are the only e-forms covered under the CFSS Scheme.

3.3 MCA Notification No. S.O. 368(E) dated 22nd January 2019 under Section 405 of the Act, mandated the filing of e-form MSME Form-1 for reporting the dues to MSMEs beyond a period of 45 days for each half year within a period of 30 days after the end of respective half years. Accordingly, for the

3.4 half year ended on 31st March 2020, the e-form MSME Form-1 was due for filing by 30th April 2020.

3.5 On this e-form, no filing fees are prescribed by MCA. Further, this e-Form is not included in the list of e-forms that would be covered under the Scheme.

3.6 It is pertinent to note that the Central as well as State Governments had imposed a lockdown with effect from March 22, 2020 and March 23, 2020 to avert the drastic situation created due to COVID-19 pandemic. As a result, barring the essential services, the whole of the remaining economy had come to standstill. The entire private sector with the exception of essential services as well as a lot of government organizations had come to standstill. Lockdown in various parts of India still continues to be in vogue in a phased manner.

3.7 In such a situation, non-inclusion of e-Form MSME-1 will entail into prosecution and proceedings for imposition of penalties which can never be the intention of the Government which has brought out such a generous Scheme for making companies compliant.

3.8 Considering the anomaly explained herein above and the hardships being faced by businesses, we request you to kindly include e-form MSME Form-1 also in the list of e-forms covered under CFSS Scheme so as to assist businesses in undertaking due compliance.

4. Clarification sought with regard to Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013

4.1 MCA has vide its General Circular No. 23/2020 dated 17th June, 2020 introduced a **“Scheme for relaxation of time for filing of forms related to creation or modification of charges”**.

4.2 As per Section 77 of Companies Act, 2013 charges are required **to be registered within 30 days** of the date of creation or modification of charges. The Charges can be registered **with additional fees within after 30 days but within 60 days** of the date of creation or modification of charges. Further **ad-valorem fee** is levied for registration of charges **after 60 days but within 120 days** of the date of creation or modification of charges. Charges **cannot be registered after 120 days** of such creation or modification.

4.3 As per above-mentioned Scheme for filing of forms related to creation or modification of charges, the period of 7 months i.e. from 1st March, 2020 upto 30th September, 2020 shall be excluded while counting number of days (i.e. 120 days) for filing of form related to creation/modification of charges. As explained in said circular, there can be 2 scenarios as given below:

	Date of creation/modification of charge
1	<p>Charge <u>created or modified before 1st March 2020</u> - but filing of form had (120 days) not expired as on 1st March 2020</p> <p>Days will be counted for deciding fees will be as follows:</p> <p>(A) If Form is filed on or before 30th September 2020 Number of days from creation or modification of charge till 29th February, 2020 will only be calculated and filing fees shall be levied accordingly.</p> <p>(B) If Form is filed after 30th September 2020 Number of days from creation or modification of charges till 29th February, 2020 + No. of days beginning from 1st October 2020 till the date of filing will be calculated and filing fees shall be levied accordingly.</p>
2	<p>Charge <u>created or modified between 1st March 2020 to 30th September 2020</u></p> <p>Days will be counted for deciding fees will be as follows: First day will start from 1st October 2020 till date of filing and accordingly fees shall be levied.</p>

4.4 If we section for non-applicability of this scheme, one of the clause where the Scheme will not be applicable is where *“the timeline for filing the form expires at a future date, despite exclusion of time provided in sub-para (iii)”* i.e. period from 1st March, 2020 to 30th September, 2020.

4.5 This clause is creating a confusion as to what will be meant by ‘timeline’ and ‘future date’? Whether the words ‘timeline for filing the form’ mean normal time period of 30 days available for filing OR maximum time period of 120 days within which this form can be filed? Whether ‘future date’ means any date from 1st October 2020 or any further date?

4.6 Since time provided in sub-para (iii) of this circular is till 30th September 2020, if we consider that *“the timeline for filing the form expires at a future date, despite exclusion of time provided in sub-para (iii)”* means 30 days expire on or after 1st October 2020, it will mean that

- for the charges created/ modified in the month of September 2020, additional filing fees will be payable, if it is filed in November 2020 OR
- For these charges, ad valorem fees will be payable, if it is filed in the months of December 2020 and January 2021.

This will contradict with the Scenario 2 mentioned in above table.

4.7 Similarly since time provided in sub-para (iii) of this circular is till 30th September 2020, if we consider that *'the timeline for filing the form expires at a future date, despite exclusion of time provided in sub-para (iii)'* means 120 days expire on or after 1st October 2020, it will mean that

- for the charges which get created/ modified in the months from March to May 2020 cannot be filed post 30th September 2020, and
- for charges created / modified in June and July 2020, ad valorem fees will have to be paid, if filed in October 2020, and
- for charges created / modified in August 2020, additional fees will have to be paid, if filed in October 2020.

This will also contradict with the Scenario 2 mentioned in above table.

4.8 Considering the above anomaly, we request your good office to clarify what the words "timeline" and "future date" means in the words *'the timeline for filing the form expires at a future date, despite exclusion of time provided in sub-para (iii)'*

OR

Simply clarify that the forms for charge created / modified during the period from 1st March 2020 to 30th September 2020 and if not filed till 30th September 2020, can be filed only within a period of 120 days from 1st October 2020 as per the applicable slabs of filing fees.

The 1st para of the General Circular states that the timeline for filing of form for registering creation or modification of charge is provided in Section 77 of CA, 2013 i.e. filing of form within a total of 120 days of creation or modification of charge. Hence, we need to modify this content, re-frame and simplify representation no. 4.

Thanking You,

Sincerely,

For **The Chamber of Tax Consultants**

Sd/-

Anish M. Thacker
President

Sd/-

Mahendra Sanghvi
Chairman
Law & Representation Committee

Sd/-

Apurva Shah
Co-Chairman