



Corpedia

advith
CONSULTING

**“Condonation of Delay
Scheme 2018”**

06th January 2018

Background:

As per provisions of Companies Act, 2013 companies which are registered under the Act (or erstwhile Companies act, 1956) are required to file their Annual financial statements and Annual returns with the Registrar of companies (ROC) within the prescribed time period. Default of which would be construed as an offence and multiple consequences follow.

One of the consequences of non filing of annual accounts and returns is that the Director of such company would be disqualified from acting as a Director and cannot be appointed as Director for a period of 5 years¹.

Sequence of events

In a drive to clean up the system and to weed out companies which were being used as a tool for illegitimate financial activity, Ministry of Corporate Affairs (MCA or Ministry) in March-April 2017 issued public notices indicating all those companies who had not started operations or sought permission from ROC to keep it as dormant or had missed filing annual returns for a continuous period of 3 financial years; would be struck off from the Registrar of Companies.

Subsequently, such companies which did not respond to the public notice and made good their non-compliance were struck off by issuing another set

of notices in the month of June-September 2017, which lead to an unprecedented strike off of around 2.10 lakh companies across India.

Further, MCA in September 2017 identified 309,614 directors associated with the default companies which failed to file the financial statements or annual returns for a continuous period of 3 financial years i.e., 2013-14 to 2015-16 and they were barred from accessing the online registry and list of such directors was published in the website of MCA.

As a result of above action a string of representations from default companies and Directors seeking an opportunity to make good their mistake and normalize operations was received by MCA and also writ petitions were filed before various High courts seeking relief from the disqualification.

Introduction of “Condonation of Delay Scheme 2018” (CODS-2018)

In order to provide an opportunity to rectify, The Central Government has decided to introduce a Scheme² CODS-2018. Snapshot of the scheme is as under:

- **Period of the scheme:**

The scheme has come into force with effect from 1st January 2018 and shall remain in force up to 31st March 2018.

¹section 164(2)(a) read with section 167 of Companies act,2013

²General Circular No.16/2017 dated 29/12/2017

- **Applicability of the Scheme:**

- a. Applicable to all defaulting companies (other than companies which have already been struck off/whose names have been removed from the Register of companies under section 248(5) of the Act.)
- b. Permitted to file only 'overdue documents' which were due for filing till 30th June 2017 in accordance with the provisions of the scheme? (*Overdue documents - enlisted subsequently*)

- **Procedure to be followed to avail the scheme:**

1. MCA would temporarily activate the DIN of Disqualified Directors during the validity of the scheme to enable them to file the overdue documents.
2. This scheme shall not apply to the filing of documents other than the following '**overdue documents**':

✓ Annual returns of company having share capital
✓ Particulars of Annual return for the company not having share capital
✓ Forms for Filing Financial statements (Including XBRL)
✓ Form for submitting compliance certificate with ROC
✓ Form for appointing Auditors / Intimation for appointing Auditors

3. Overdue documents as to be filed by paying filing fees and additional fees applicable as per section 403 of the act read with Companies (Registration Offices and fee) Rules, 2014.
4. After filing the documents as permitted under the scheme such default companies to seek for condonation by filing form **e-CODS**. The fee for filing application e-form CODS is Rs. 30,000/- This is a Onetime fine that must be paid by the defaulters.

The e-Form CODS 2018 would be available from **20.02.2018** or an alternate date which will be intimated by the ministry on www.mca.gov.in .

Overdue documents are to be filed without waiting for the availability of the e-CODS form.

5. On the expiry of the scheme the DINs of the directors who have not filed their documents under the scheme or as per the records, such directors are still found to be disqualified in terms of section 164of the Act shall be liable to be deactivated.
6. The DIN of directors of defaulting companies whose name have been removed from the register under section 248(*who are not eligible for this scheme*) of the Act and which have filed the application for revival u/s 252 of the Act up to the date of this scheme shall be re-activated

only on the basis of NCLT order of revival provided all the overdue documents are filed by the company.

Effect of availing the scheme:

Concerned ROC will withdraw prosecution proceedings relating to the documents filed under this scheme. However, Government has reserved the right to prosecute or levy penalty for any other default committed by continuing to hold office even when such office was vacated by other actions.

Effect of Non-availing the scheme:

At the conclusion of the scheme the Registrar shall take all the necessary actions under the Companies Act, 2013/1956 against the company who have not availed the benefit under the scheme and continue to be in default in filing the overdue documents.

Advith Comments:

There are multiple instances where a lot of small corporate and family run corporate entities do not take compliances under the Companies Act very seriously. A very strong action by the Government was required to separate the **ignorantly non-compliant with the deliberately non-compliant**.

It is surprising to see that even when a public notice was given to strike off the company, there were a few people who did not respond and then made representations before the Ministry or filed writ petitions, when DIN of such Directors were deactivated.

It would be high time if defaulting companies and Director of such companies do not avail this scheme to come clean. The CODS-2018 is a good one time opportunity to clean up the compliances otherwise they not only face the risk of being disqualified from acting as Director for 5 years but could also face prosecution and penalty proceedings in case they continue to act of Directors.

Further, Ministry has also very clearly stated their intentions of taking all actions against those Companies also which do not file the overdue documents. This could well mean another set of public notice for striking off of companies from the register.

It would be highly recommended that any defaulting companies/director avail this scheme to set their house in order as far as compliance under Companies Act is concerned.

About Advith Consulting

Advith Consulting is a multi disciplinary consulting Firm offering range of services to cater clients with their professional needs. What makes Advith Consulting, a class apart is:

- Energetic, experienced and vibrant professionals driven by knowledge-centric client servicing practices.
- Fluidic organization helping clients achieve their business goals by providing solutions to various requirements by seamlessly integrating all professional services.
- Belief in upholding the highest standards of business ethics with a total commitment to quality.
- Adequately backed by a committed team of employees, talent and expertise in multiple areas, which is the key for timely deliverables.

Reach us at:

Advith Consulting LLP

No. 72/1, 1st Floor, Jnanodaya School Road
Shankarapark, Shankarpuram, Bangalore 560 004

Contact: 080 22426484;

Email: info@advithconsulting.in

Visit us at: www.advithconsulting.in

Disclaimer: The content of this alert is intended solely for the purpose of information. This should not be treated as a technical advice for making decisions. You would have to contact your advisor to seek specific applicability of the contents of the alert for your case. We bear no responsibility of any loss occasioned to any person acting or refraining from action as a result of any material in this alert.
