

# Amita Desai & Co., Company Secretaries, Mumbai

## SETTLEMENT SCHEME FOR LATE FILING BY LIMITED LIABILITY PARTNERSHIP (LLPs)

### LLP SETTLEMENT SCHEME 2020----- One time condonation of delay in filing documents with RoC

#### **A. Holi Gift in the name of EASE OF DOING BUSINESS & compliance of Guidelines of FATF ( Financial Action Task Force)**

The Central Government in the year 2018 had gifted a Scheme “Condonation of Delay Scheme 2018” [CODS-2018] to business owners operating business in the form of company structure which was opened from January 01, 2018 to May 01, 2018.

Now in 2020, the Central Government had decided to gift a Scheme **“LLP Settlement Scheme, 2020”** to business owners who are operating the business in the form of Limited Liability Partnership structure. **This scheme will remain open from 16<sup>th</sup> March, 2020 to 13<sup>th</sup> June , 2020.**

#### **B. Why such GIFT ?** There are reasons for offering such Gift to corporate/ business owners by the Regulator . Few are as follow:

- (1) Government wants **up to date records** in the electronic registry as per mandate of Financial Action Task Force (FATF) for all its member countries which brings transparency and better corporate governance ;
- (2) As part of **Ease of Doing Business and Ease of Living in India,** the Government keep offering such gift as Onetime Relaxation in penalty to such errant business owners to clear their sins by paying one time relaxation on additional fees;
- (3) A large **number of representations** were received from various quarters for waiver of fee or condonation of delay and relaxations in additional fee on the ground of excessive financial burden ;
- (4) Form -8 (Accounts & Solvency of LLP) and Form -11 (Annual Return of LLP) is not filed due to excessive financial burden and **not affordable by small business** owners for delay filing of Rs. 100/- per day. Ministry has seen that there are large number of Form -3 (LLP Agreement & changes) and Form -4 ( Notice of appointment of Partner with his consent) is not filed in time and which creates huge penalty of delay filing fees to LLP;
- (5) Regulator realise there may **be error intentional or unintentional** in filing of forms/ returns etc in time. Sometimes error can be genuine, by mistake of professional, technical errors. Hence Regulators comes out with such scheme where in without considering merit, nature, gravity and impact of defaults , it agrees to settle such defaults on payment of lumpsum fees or reduced delay / additional fees to bring everyone at par and have up to date records in its data system. Such scheme offers immunity from prosecution by the Regulator in future for such defaults and **offer resolution to such continuing offence.**
- (6) Providing one time opportunity and window to clear all backlog on cut off date of the Scheme and there after the n Regulator can

#### **C. Power of Central Government** The Central Government derives powers under section 460 of the Companies Act, 2013 (extended to LLP vide its notification no. G.S.R. 59(E) dated January 30, 2020 under section 67(2) of Limited Liability Partnership Act, 2008).

#### **D. Features of Scheme**

1. **On March 04, 2020** vide its General Circular no. 06/2020 Ministry of Corporate affairs (MCA) has introduce LLP Settlement Scheme, 2020 (“LLP SS”) ;

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2. LLPSS shall provide window from March 16, 2020 to June 13, 2020;
3. LLPSS will be available for "Defaulting LLP" which means LLP registered with RoC under LLP Act, 2008 and which has made default in filing of documents with RoC on due dates specified in LLP Act, 2008 and rules made thereunder ;
4. LLPSS will permit such Defaulting LLP to file belated documents like Form 3, Form 4, Form 8 and Form 11, which were due for filing till 31<sup>st</sup> October, 2019 ;
5. The Scheme will allow such Defaulting LLP's to file these belated documents on payment of Additional Fee of Rs.10/- per day for delay in addition to any Normal Fees payable for filing such document/ form or return, provided that such payment of Additional Fees shall not exceed Rs.5000/- per document;
6. That means there is ceiling of Rs.5000/- on Additional Fees and Normal Fees of filing the document shall be required to pay by such Defaulting LLP;  
For Example, If a Defaulting LLP has not filed Form LLP 3 for more than 10 years the current filing fees with Additional delayed filing fees comes to approx. Rs 3.5 lakh or more considering delay of 3650 days @Rs.100/- per day, can now take benefit of LLPSS and by paying a fee of Rs5,000 as Additional Delayed Fees can regularise all its past default and up date the records on MCA
7. This LLPSS is one-time scheme available to Defaulting LLP to make good the default of delay in filing and get immunity from being prosecuted by Registrar for such defaults;
8. **Non – Applicability of scheme to certain documents:**
  - (a) LLPSS shall not apply to filing of any other documents/forms except Form 3, Form 4, Form 8 and Form 11 ; and
  - (b) LLPSS shall not apply to such Defaulting LLPs which has made an application to the Registrar for striking off its name from the Register in Form 24 as per Rule 37 (1) of LLP Rule,2009.
9. Effect of Non-availing of Scheme by such Defaulting LLPs will be very costly ,as on the conclusion of this LLPSS, the Registrar shall take necessary action against the Defaulting LLPs who has not availed the LLPSS and are in defaults in filing of documents with Registrar, as required under the provisions of LLP Act, 2008.

**Conclusion:** For better and transparent economy Regulator comes out with such scheme and LLP must take advantage of this Scheme to regularise their filing. The LLP Act 2008 was made with intention that such entity will be used by professionals and small business owners. However now with the data being available by MCA after this Scheme, there is possibility that MCA may notify under Section 67 of LLP Act, 2008 that certain provisions like Section 77, 90, 117, 164, 165, 167, 206, 209, 210,211, 212, 216 , 228, 230 to 233, 241 to 246, 247, 447 to 457 of the Companies Act, 2013 shall be applicable to LLP with such exception, modification and adaptation, as may be specified in the notification.

The link for the aforesaid Scheme is as below:

[http://www.mca.gov.in/Ministry/pdf/GeneralCircular06\\_04032020.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircular06_04032020.pdf)

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