

**CONDONATION OF DELAY SCHEME, 2018**

**Relief to Disqualified Directors**

**BRIEF BACKGROUND:**

➤ **COMPLIANCE REQUIRED UNDER COMPANIES ACT 2013**

Companies registered under the Companies Act, 2013 (or its predecessor Act) are inter-alia required to file their Annual Financial Statements and Annual Return with the Registrar of Companies (ROC).

Further 164 (2) read with section 167 of the Companies Act, 2013 (the Act) provides for disqualification of Directors if default is made by the Company in filing Annual Financial Statements or Annual Return for a **continuous period of 3 years**.

➤ **ACTION TAKEN BY MINISTRY CORPORATE AFFAIRS (MCA)**

Ministry of Corporate Affairs (MCA) had identified approx 3,09,614 Directors associated with Companies that had failed to file Annual Financial Statements and Annual Returns for a continuous period of 3 years i.e for FY 2013-14 to 2015-16. Hence in accordance with section 164 (2) read with section 167 (1) (a) of the Act and they were barred from accessing the online registry and Director Identification Number (DIN) were deactivated. List of such directors was also published on the website of MCA.

As a result of above action, Ministry had received representations from industry, defaulting Companies and their Directors seeking an opportunity for the defaulting Companies to become compliant and normalize operations. Further certain affected persons had also filed writ petitions before various High Courts seeking relief from disqualification.

**THE RELIEF- CONDONATION OF DELAY SCHEME 2018 [CODS-2018]:**

Considering the representations and in order to provide opportunity for the non-compliant, defaulting Companies to make the default good, MCA vide General Circular No. 16/2017 dated December 29, 2017 has announced a Scheme namely “**Condonation of Delay scheme 2018**” [CODS-2018] which shall come into force **from January 01, 2018 and shall remain in force up to March 31, 2018**.

**3 Months window is provided to defaulting Companies within which Annual filing should be Completed.**

## **IMPORTANT DEFINITION UNDER CODS-2018:**

### ➤ **Overdue Documents:**

It means the **Financial Statements or the Annual Returns** or other associated documents, as applicable in the case of a defaulting Company and documents mentioned as under:

<b>Sr. No.</b>	<b>Form</b>	<b>Description</b>
1	20 B / MGT-7	Annual Return by a Company having Share capital
2	21 A/ MGT-7	Annual Return by a Company not having Share capital
3	23 AC, 23 ACA, 23AC-XBRL, 23ACA-XBRL, AOC-4, AOC-4 (CFS), AOC (XBRL) and AOC-4 (non XBRL)	Forms for filing Balance sheet/ Financial Statements and Profit and Loss Account
4	66	Form for submission of Compliance Certificate with the Registrar
5	23B/ ADT-1	Form for intimation for Appointment of Auditors

### ➤ **Defaulting Company:**

It means a Company **which has not filed its Financial Statements or Annual Returns** as required under the Companies Act, 1956 of Companies Act, 2013 as the case may be, and the Rules made thereunder for a continuous period of 3 years.

## **APPLICABILITY:**

**CODS-2018** is applicable to all defaulting Companies (other than the Companies which have been struck off/ whose names have been removed from the register of Companies under section 248 (5) of the Act). A defaulting Company is permitted to file its overdue documents which were due for filing till 30.06.2017 in accordance with the provisions of this Scheme.

**Hence CODS-2018 would be available for the Companies which are defaulting but whose status in the record of the ROC is Active.**

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## **PROCEDURE:**

1. The **DINs** of the disqualified directors de-activated at present shall be **temporarily activated during the validity of the scheme** to enable them to file the overdue documents.
2. The **defaulting Company shall file the overdue documents** in the respective prescribed e-forms paying the statutory filing fee and additional fee payable as per section 403 of the Act which will be **maximum additional fees**.
3. The defaulting Company after filing documents under this scheme, shall **seek condonation of delay by filing form e-CODS 2018 along with a fee of Rs. 30,000/-**. E-form CODS – 2018 will be made available on February 20, 2018 on MCA website or such other date as may be notified.

## **EFFECT OF CONTINUING THE DEFAULT:**

The DINs of the Directors associated with the defaulting Companies that have not filed their overdue documents and the e-form CODS, and these are not taken on record in the MCA21 registry and are still found to be disqualified on the conclusion of the scheme in terms of section 164(2) (a) r/w 167(1) (a) of the Act shall be **liable to be deactivated on expiry of the scheme period**.

## **STRUCK OFF COMPANIES**

In the event of defaulting Companies whose names have been removed from the ROC under section 248 of the Act (Struck off) and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN shall be re-activated only after NCLT order of revival subject to the company having filing of all overdue documents.

## **OUR VIEWS:**

Introduction of CODS 2018 would certainly provide relief to the disqualified Directors however there are still some unanswered questions like:

- Whether last date of filing e-form CODS – 2018 will also be March 31, 2018? (There is no clarity in circular in this regard.)
- How disqualification of Directors can be removed for Directors of a defaulting Company that has been strike off which was actually not carrying any business or its restoration application is rejected by NCLT?
- Whether non defaulting Companies having disqualified directors shall be allowed to file any documents once their DIN are temporarily activated w.e.f. 01.01.2018?

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## **Amita Desai & Co. Company Secretaries**

### **Mumbai Off :**

10s, Hubtown Solaris  
Off Western Express Highway  
East End of Andheri Flyover

Landline: + 91-22-2684-5920/21  
Fax: + 91-22-6678-7499  
Mobile : + 91-982-017-7691