

Company Law Updates

Condonation of Delay Scheme, 2018 [CODS-2018]

(Vide MCA General Circular No. 16/2017 dated 29.12.2017)

Background

1. Companies registered under the Act, 1956 or 2013 are inter alia required to file their Annual Financial Statements and Annual Returns with ROC and non-filing of such reports is an offence under the said Act.
2. Section 164(2) read with section 167 of the CA, 2013 provides for disqualification of a director on account of default by a company in filing an annual return **or** a financial statement for a continuous period three years. Further Rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014 further prescribes that every director shall inform the company concerned about his disqualification, if any u/s 164(2).
3. In September, 2017, MCA identified 3,09,614 directors associated with the companies that had failed to file returns/statements online registry for a continuous period three years 2013-14 to 2015-16 and were barred from accessing the online registry and list of such directors was published in the website of MCA.
4. A spate of presentations from industry, defaulting companies and their directors were received by MCA seeking an opportunity for the defaulting companies to become compliant and normalise operations. Besides writ petitions have been filed before various High Courts seeking relief from their disqualifications.
5. In exercise of its powers conferred u/sections 403, 459 and 460 of the CA, 2013, the Central Government has introduced a scheme called "**Condonation of Delay Scheme 2018 [CODS-2018]**."

Procedure under the CODS-2018

1. The DIN of the concerned disqualified directors de-activated at present shall be temporarily activated during the **validity of the scheme (w.e.f. from 01.01.2018 to 31.03.2018)**. The DIN's of the directors associated with defaulting companies that have not filed their overdue documents and found to be disqualified on the conclusion of the scheme shall be liable to be deactivated on the expiry of the scheme period.
2. The defaulting company shall file the overdue documents in the respective prescribed e-forms paying statutory filing fee and addition fee.
3. After filing such overdue documents, the defaulting company shall seek Condonation (in form e-CODS which would be available from 20.02.2018 or an alternate date to be intimated by the MCA) with the fee for filing application of Rs.30,000.
4. The names of defaulting companies whose names have been removed from the register of companies u/s 248 and which have filed applications for revival u/s 252 upto the date of the scheme, the Director's DIN shall be re-activated only on NCLT order of revival and subject having filing of all overdue documents.
5. The ROC shall withdraw the prosecution(s) pending if any before the concerned Court(s) for all documents filed under the scheme. However, this scheme is without prejudice to action u/s 167(2) of the Act, 2013 or civil and criminal liabilities if any of such disqualified directors during the period they remained disqualified.
6. At the conclusion of the Scheme, the Registrar shall take all necessary actions under CA, 1956/2013 against companies who have not availed themselves of this Scheme and continue to be in default in filing the overdue documents.