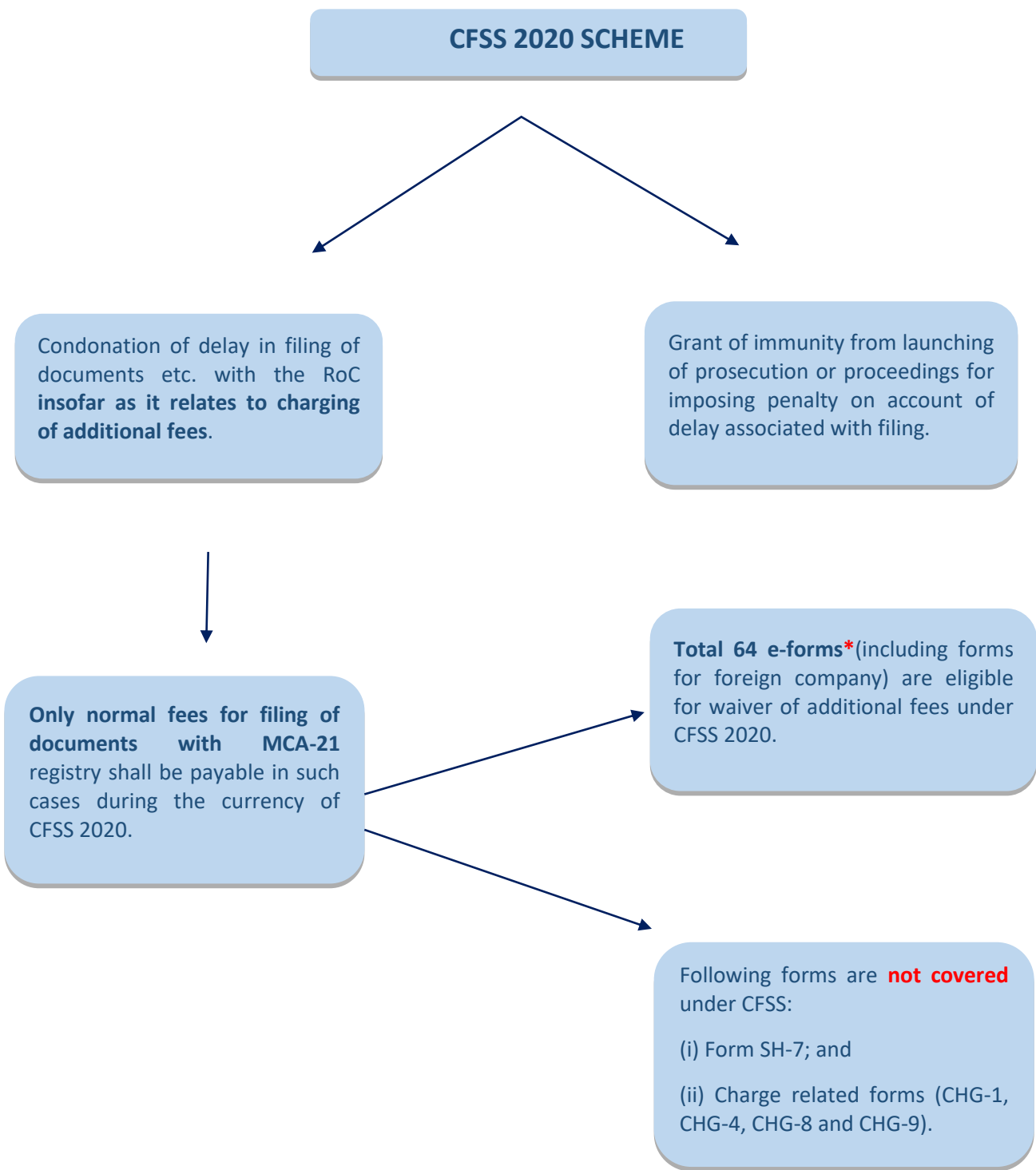


ONE TIME OPPORTUNITY TO HAVE A CLEAN SLATE

BRIEF:

The Ministry of Corporate Affairs (“MCA”) vide its circulars dated March 24, 2020¹ and March 30, 2020² promulgated the Companies Fresh Start Scheme, 2020 (‘CFSS 2020’) which facilitates for the companies to make a fresh start on a clean slate. The substance of CFSS 2020 is depicted in below pictorial chart:



¹ MCA Circular dated March 24, 2020: http://www.mca.gov.in/Ministry/pdf/Circular_25032020.pdf

² MCA Circular dated March 30, 2020: http://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf

*List of e-forms which are eligible for waiver of additional fees:http://www.mca.gov.in/Ministry/pdf/CFSS2020_02042020.pdf

The CFSS 2020 has come into force on 01.04.2020 and shall remain in force till 30.09.2020.

FAQs on Companies Fresh Start Scheme, 2020:

Introduction to Companies Fresh Start Scheme, 2020

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Frequently Asked Questions:

Preliminary	
1.	<p>What is CFSS 2020?</p> <p>This is a scheme promulgated by MCA allowing defaulting companies a one-time opportunity to complete all pending compliances by filing belated documents in MCA-21 registry including annual filings without being subject to a higher additional fees on account of delay and for getting immunity from prosecution for any default that has been caused in this regard.</p>
2.	<p>What are the Objectives of the CFSS 2020?</p> <p>a) To give a one-time opportunity to defaulting companies to file belated documents with MCA – 21 registry;</p> <p>b) To condone the delay in filing the annual statements, documents and returns;</p> <p>c) To waive off the additional fees for not filing various documents;</p> <p>d) To grant immunity from any prosecution or proceedings for imposing penalties.</p>
3.	<p>What is the cumulative effect of the CFSS 2020?</p> <p>a) Additional fees on any belated document shall not be applicable during CFSS 2020;</p> <p>b) Immunity certificate will be issued by the relevant authority with respect to any penal action;</p> <p>c) Company will withdraw any appeal against any prosecution launched;</p> <p>d) RoC shall withdraw all pending prosecution proceedings regarding such forms/ returns with respect of which the company has taken benefit under CFSS 2020;</p> <p>e) RoC will withdraw the proceedings of adjudication of penalties under section 454 of CA 2013.</p>
4.	<p>What is the meaning of defaulting company?</p> <p>Defaulting company means a company defined under Companies Act, 2013 and companies which has made a default in filling of:</p> <p>a) Any of document;</p> <p>b) Any of statement,</p> <p>c) Any of return etc.</p> <p>Including annual statutory document on MCA-21 registry.</p>

5.	<p>How many e-forms are covered under CFSS 2020?</p> <p>There are total 76 e-forms, out of that:</p> <ul style="list-style-type: none">a) 54 under the Companies Act, 2013;b) 10 under the Companies Act, 1956; andc) 12 for Limited Liability Partnerships (“LLPs”) under the Limited Liability Partnership Act, 2008.
6.	<p>What all e-forms are covered under CFSS 2020 which are eligible for waiver of an additional fees?</p> <p>All e-forms are covered under the CFSS 2020 except :</p> <ul style="list-style-type: none">a) Form SH-7; andb) Charge related forms (CHG-1, CHG-4, CHG-8 and CHG-9).
Applicability of CFSS 2020	
7.	<p>What is the currency of this CFSS 2020?</p> <p>CFSS 2020 will remain in force from 01-04-2020 till 30-09-2020. All pending filings have to be done within the currency of CFSS 2020.</p>
8.	<p>Is CFSS 2020 applicable to companies only or even LLPs?</p> <p>There is a separate scheme for LLPs, LLP Settlement Scheme, 2020. The duration of the scheme for LLP is from 01.04.2020 to 30.09.2020.</p>
9.	<p>Can an inactive company directly file for closure under CFSS 2020?</p> <p>No, such inactive company has to file all the belated documents/returns and then apply for closure. However, there are underlying benefits for the company under CFSS 2020. An Inactive defaulting company while filing pending forms under CFSS 2020 can simultaneously apply for the status of dormant company under section 455 of CA 2013 or apply for strike off under section 248 of CA 2013.</p>
10.	<p>Whether a company, which has received the final notice under Section 248 of CA 2013 from the RoC, can take the benefit of CFSS 2020?</p> <p>No. CFSS 2020 shall not be applicable to those companies against which action for final notice for striking off the name under section 248 of CA 2013 has already been initiated by the designated authority.</p> <p>However, if the company has received a show cause notice and not the final notice, then the company can take the benefit of the same after getting itself revived under section 252 of CA 2013.</p>
11.	<p>Can a company, which is already struck off due to non-filing of returns, avail the benefits under CFSS 2020?</p> <p>Such company has to first make an application to NCLT for its revival under section 252 of CA 2013 and after revival, such company can file its belated documents/returns under CFSS 2020.</p>
12.	<p>A company in June, 2018 had increased its authorized share capital from Rs. 10,00,000 to Rs. 50,00,000. The company did not file form SH-7 within the stipulated time. Can the same be filed now without additional fee?</p> <p>No, the CFSS 2020 clearly states that it is not applicable on compliance relating to increase in authorized share capital of the company, therefore the company will have to pay the government fee as well as the additional fees.</p>

13.	<p>Can foreign companies take benefit of CFSS 2020 to file belated documents?</p> <p>The same is not clear from MCA circular; however, the list of e-forms which are eligible for waiver of additional fees issued by MCA includes e-forms relating to foreign companies (e-form FC-1, FC-2, FC-3 and FC-4). So one can safely assume that foreign companies can also take benefit of CFSS 2020.</p>
14.	<p>Is CFSS 2020 available to Nidhi companies?</p> <p>Yes, Active Nidhi companies can avail the benefit of this CFSS 2020.</p>
15.	<p>Can a company under corporate insolvency resolution process (CIRP) can avail the benefit of CFSS 2020?</p> <p>As long as the status of company is active, then such company can avail the benefit of CFSS 2020.</p>
16.	<p>Applicability on Government Companies and Section 8 Companies?</p> <p>Since, CFSS 2020 are available for all kind of companies, therefore, Government Companies and Section 8 Companies can also avail the benefit of this CFSS 2020.</p>
Procedure and fee structure	
17.	<p>What is the Procedure to seek immunity under CFSS 2020?</p> <p>The defaulting company seeking immunity under CFSS 2020, should proceed in the manner, as given below:</p> <ol style="list-style-type: none"> Identifying pending documents, statements and returns to be filed; Filing pending documents, statements and returns and paying normal fee within time period of 6 months (starting from 01.04.2020 till 30.09.2020); Withdrawal of appeal, if any, filed before a competent court or authority; Filing of form CFSS 2020 in between the period starting from 1.10.2020 till 31.03.2021. Obtaining immunity certificate. <p>The defaulting company is required to state SRNs of all belated forms in e-form CFSS.</p>
18.	<p>Whether the defaulting company needs to make any application before filing such forms?</p> <p>No application is required to be filed before filing belated forms. However, the company shall file e-form CFSS-2020 (yet to be deployed) with nil fee for obtaining immunity certificate after filing all the belated forms in accordance with CFSS 2020.</p>
19.	<p>Whether there is any preconditions before availing the benefit of the CFSS Scheme?</p> <p>As per the guidance given by MCA, the benefit of CFSS 2020 can be availed only after filing of the following forms:</p> <ol style="list-style-type: none"> Complete the KYC of all directors of the Company by way of filing of form DIR 3 KYC/ DIR 3 KYC web. Further, CFSS 2020 also allows directors to file their DIR 3 KYC/DIR-3 KYC WEB and Active form INC-22A without paying any additional fees; and Only active compliant companies i.e. only those Companies whose status is 'Active' on MCA portal will be able to seek the benefit of CFSS 2020.
20.	<p>What will be the fee to be paid to file all e-forms during the currency of the Scheme?</p> <p>Normal filing fees as per rule 12 of the Companies (Registered Offices and Rules) Rules, 2014 for respective e-forms will have to be paid for filing of belated e-forms during the currency of CFSS 2020.</p>

21.	<p>What is the statutory fee for filing e-form CFSS 2020 and till when is the Scheme valid?</p> <p>There is no filing fees for the e-form CFSS 2020 which needs to be done within 6 months from the date of end of the Scheme. The Scheme shall conclude on 30.09.2020.</p> <p><u>Timelines and fee-structure:</u></p> <table><tr><th>S.No.</th><th>Steps</th><th>Fees structure</th><th>Time period</th></tr><tr><td>1.</td><td>Filing of belated documents/e-forms</td><td>Normal Fee as per rule 12 of the Companies (Registered Offices and Rules) Rules, 2014</td><td>01.04.2020 till 30.09.2020</td></tr><tr><td>2.</td><td>Filing of e-form CFSS</td><td>No Fee</td><td>After the closure of CFSS 2020 and once documents are taken on record or approved by Designated authority but not later than 6 months from closure of scheme</td></tr></table>	S.No.	Steps	Fees structure	Time period	1.	Filing of belated documents/e-forms	Normal Fee as per rule 12 of the Companies (Registered Offices and Rules) Rules, 2014	01.04.2020 till 30.09.2020	2.	Filing of e-form CFSS	No Fee	After the closure of CFSS 2020 and once documents are taken on record or approved by Designated authority but not later than 6 months from closure of scheme
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22.	<p>Whether the forms filed during CFSS 2020 are required to be signed through DSC?</p> <p>Yes. All the e-forms are required to be filed as per the regular process.</p>												
Immunity Certificate													
23.	<p>What is the meaning of an immunity certificate under the CFSS 2020?</p> <p>It is a certificate given by the designated authority granting the immunity from prosecution or imposition of penalty in relation to the belated e-forms filed pursuant to CFSS 2020.</p>												
24.	<p>What are the necessary conditions for the grant of Immunity Certificate?</p> <p>For the grant of the immunity certificate, the defaulting company shall have filed all the belated documents, returns and statements and shall declare that no petition or appeal was filed against any notice issued and complaint filed before the court or NCLT or NCLAT or Regional Director or any other adjudicating authority for violation of the provisions under the CA 2013 in respect of documents stated in e-form CFSS 2020, or where filed, has withdrawn such petition or appeal.</p>												
25.	<p>When an application for seeking immunity would be filed?</p> <p>Application for seeking immunity certificate will be filed electronically:</p> <ol style="list-style-type: none">after the closure of CFSS 2020; andafter the documents are taken on file or on record or approved by designated authority, as the case may be but not after the expiry of 6 months from the date of closure of CFSS 2020.												
Specific cases													
26.	<p>ABC Limited during the currency of CFSS 2020 becomes the defaulting company. Whether ABC Limited can now take benefit of CFSS 2020 or only such companies which are on the commencement of CFSS 2020 can take its benefit.</p> <p>As per MCA Circular dated 30.03.2020, any defaulting company is permitted to file belated documents which were due for filing on any given date in accordance with the provisions of the CFSS 2020. Therefore, in our view, even such companies which become defaulting company after the commencement of CFSS 2020 can also take the benefit of CFSS 2020.</p>												

27.	<p>The ROC had filed prosecution against ABC Limited on account of non-filing of statutory returns, which is pending before the court. Subsequently, during the pendency of aforesaid prosecution, ABC Limited completed all the delayed statutory filing by paying additional fees before the commencement of CFSS 2020. Now, whether ABC Limited can seek the immunity from prosecution through filing of e-form CFSS under CFSS 2020?</p> <p>CFSS 2020 is silent on this issue and there is no clarity given as to what would be the fate of the prosecutions pending before the courts and the company has complied with the provisions by filing the e-forms belatedly along with additional fees.</p> <p>It appears from the format of form CFSS that the immunity under CFSS 2020 is available only in respect of such e-forms which have been filed pursuant to the CFSS 2020. However, we are of the view that MCA should extend the same benefit to such companies who have filed the belated e-forms along with additional fee even before commencement of CFSS and RoCs should logically withdraw the prosecutions, which are pending before any court of law concerning belated filing of the documents.</p>
28.	<p>Can the benefit be availed by the directors for updating / filing the KYC documents?</p> <p>CFSS 2020 will allow directors whose DIN has been marked as ‘deactivated’ due to non-filing of DIR-3KYC/DIR-3 KYC-Web, to file DIR-3KYC/DIR-3KYC-Web within the currency of the Scheme without filing of any additional fees.</p>
29.	<p>Whether non-compliances other than delayed filing are also covered under CFSS 2020?</p> <p>Immunity from the launch of prosecution or the proceedings for imposing penalty under the CA 2013 pertain to any delay associated with the filings of belated documents. Any consequential proceedings, like any proceedings involving any related party transactions, non-disclosure of interest etc. would not be covered by such immunity.</p> <p>For example, under section 42(8) of CA 2013, every company is required to file a return of allotment under e-form PAS-3 within the prescribed period. However, proviso to section 42(4) of CA 2013 also requires that the utilization of money raised through private placement shall not be made unless the return of allotment has been filed in the registry. Now, the immunity under CFSS 2020 shall be available in respect of the proceedings for imposing penalty on account of delay in filing of return of allotment, but not on account of utilization of money raised through private placement prior to the filing of the return with the registry.</p>
30.	<p>A company has not convened its Annual General Meeting (“AGM”) within the time stipulated under the CA 2013 and also failed to file financial statements and annual return in e-form AOC-4 and form MGT-7 respectively. Can CFSS 2020 provide immunity from the non-compliance relating to delay in convening AGM?</p> <p>Delay in holding AGM is violation of law. CFSS 2020 is only to provide immunity for delayed filing. Accordingly, once the AGM is duly conducted after necessary permission from the RoC, the filings related to the said AGM can be done during the tenure of CFSS 2020.</p>
31.	<p>Whether CFSS 2020 provide immunity in case of default in annual filings?</p> <p>CFSS 2020 grants immunity from the additional fee and condonation in respect of all the annual filing forms pending to be filed by the companies before 30.09.2020.</p>
32.	<p>If a company has not filed e-forms AOC-4 & MGT-7 for last 10 years & status of the company is active in the records of RoC, can it avail this scheme?</p> <p>Irrespective of due dates, the CFSS 2020 can be availed for all the forms unless expressly provided in the scheme. In the given case, the all the annual filing related forms can be filed at normal fee only without incurring any additional liability.</p>
33.	<p>Name of the company is reserved but timeline for filing of incorporation documents has expired. Can CFSS 2020 provide immunity?</p> <p>No. CFSS 2020 will not provide immunity for incorporation procedure.</p>

34.	<p>How to take benefit of CFSS 2020, where all the directors are disqualified?</p> <p>1. Company first have to appoint new directors by promoter by approaching RoC; and</p> <p>2. After appointment of new director company can file forms under CFSS 2020.</p>
35.	<p>‘X’ is a private limited company which has been incorporated in the year 2018. The first annual filing of X was due in the year 2019 but for certain reason the company could not file the statutory forms and now the filing will be done at a penalty of INR 100 per day. Under this scheme, can ‘X’ file the requisite forms without the payment of additional fees?</p> <p>Yes. According to CFSS 2020, a company which has defaulted to file belated documents can opt for this scheme. Therefore, the company can file the pending annual filing forms without any additional fees.</p>
36.	<p>In case an appeal is pending before the court of law then whether benefit of CFSS 2020 can be availed?</p> <p>Considering the language of CFSS 2020, in our view, where any appeal is pending before the court even then, unless restricted by court, the companies can file belated documents under CFSS 2020. However, such companies will not be able to obtain the immunity certificate under CFSS 2020 until and unless the appeal is withdrawn.</p>
37.	<p>At what stage the defaulting company is required to withdraw the appeal- whether before filing the belated forms or before filing CFSS 2020?</p> <p>Appeal to be withdrawn <u>at any time before filing CFSS 2020</u> and copy of such withdrawal order shall be enclosed with e-form CFSS.</p>
38.	<p>Whether the companies under management disputes can file belated documents under CFSS 2020?</p> <p>Considering the language of CFSS 2020, in our view, the companies under management disputes can also file belated documents, unless restricted by court or tribunal. However, it must be noted that such companies will not be entitled to obtain immunity certificate under CFSS 2020.</p>
39.	<p>Which kind of appeals shall be withdrawn before filing of CFSS 2020?</p> <p>Appeal <u>in relation to statutory filings</u> under CA 2013 shall be withdrawn.</p>
40.	<p>As per the format of form CFSS given in MCA Circular, in case of pending appeal, defaulting company shall enclose the proof of withdrawal of appeal(s) against any notice issued or complaint filed. What can be considered as a proof of withdrawal of appeal(s)?</p> <p>Order of Adjudicating authority shall be considered as valid proof of withdrawal of appeal(s). Merely application of withdrawal will not be considered as valid proof.</p>
Exclusions	
41.	<p>What are the cases excluded from the applicability of the CFSS 2020?</p> <p>As per the CFSS 2020, the following cases are excluded from its applicability:</p> <p>a) Companies against which action for final notice of strike off has already been initiated under section 248 of CA 2013;</p> <p>b) where any application has already been filed by the companies for action of striking off the name of the company from the register of companies;</p> <p>c) Companies which have been amalgamated;</p> <p>d) Application have already been filed for obtaining dormant status under section 455 of CA 2013;</p>

	<p>e) Vanishing companies;</p> <p>f) In case of increase in authorized share capital (for e-form SH-7);</p> <p>g) Charge related documents(e-forms CHG-1, CHG-4, CHG-8 and CHG- 9);</p>
42.	<p>Whether a company can file form SH-7 for sub-division or consolidation of shares with a delay under CFSS 2020?</p> <p>As per the language of CFSS 2020, this scheme is not applicable for filing of SH-7 where any increase in authorised capital is involved and therefore, delayed filing of SH-7 in other cases like for sub-division or consolidation of shares should have been permitted under CFSS 2020. However, e-form SH-7 has not been included in the list of e-forms deployed by the MCA on its portal.</p>
43.	<p>Whether the companies under management disputes can file belated documents under CFSS 2020?</p> <p>The companies under management disputes may file belated documents unless restricted by court or tribunal, however, immunity certificate cannot be granted under CFSS 2020.</p>
44.	<p>Whether company can file e-form belated INC-28 under CFSS 2020?</p> <p>As per the technical design of form INC-28, system may not allow to file belated e-form INC-28 unless such delay has been condoned by the concerned competent authority. Therefore, belated INC-28 can be filed only after obtaining the condonation order from the concerned competent authority.</p>
45.	<p>Company has made some mistake in annual form or any other form. Will CFSS 2020 also grant immunity to cure such mistakes by re-filing the forms?</p> <p>CFSS is granting immunity only for belated filing and not for rectifications of errors. All other defaults has to be cured/rectified as per the provisions of law.</p>
Consequence for not availing the CFSS 2020	
46.	<p>Forms not filed during the CFSS 2020?</p> <p>The regulatory authority may take necessary action under CA 2013 against the companies who have not availed this scheme and are in default in filing the documents in a timely manner.</p>
47.	<p>If a company has filed belated e-forms under the CFSS 2020 but could not obtain the immunity certificate due to non-filing of e-form CFSS 2020, then what would be the consequences?</p> <p>Considering the language of CFSS 2020, in our view, the company will continue to have the benefit of additional fee in respect of the belated e-forms filed under CFSS 2020, however, the company cannot rightfully claim the immunity since immunity certificate has not been obtained by filing of e-form CFSS 2020.</p>

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For any further queries or follow up please contact

Mr. Satwinder Singh: satwinder@vaishlaw.com

Mr. Lokesh Dhyani: lokesh@vaishlaw.com

Ms. Muskan Agarwal: muskan@vaishlaw.com

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