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COMPANY LAW SETTLEMENT SCHEME, 2014

BACKGROUND

The Companies Act, 2013 (“**Act**”) lays down a strict regime for the defaulting companies with higher additional fees and enhanced quantum of punishment. Further, the Act provides that default in filing annual documents for a continuous period of 3 financial years will lead to disqualification of the directors, which provision has been extended to all companies as opposed to only public companies, which was the case under the Companies Act, 1956.

In this regard, the Ministry of Corporate Affairs has introduced a scheme called the Company Law Settlement Scheme, 2014 (“**Scheme**”) condoning delay by defaulting companies in filing of specified documents (due for filing till 30 June 2014) with the Registrar of Companies (“**ROC**”). The Scheme also extends certain other benefits such as the grant of immunity from prosecution to the defaulting companies, and charging of a reduced additional fee for belated filings.

KEY FEATURES OF THE SCHEME

- Condonation of delay in filing of annual documents with the ROC.
- Reduction in additional fee payable for filing belated returns.
- Grant of immunity from prosecution.
- Simplified application and reduced fees for inactive companies¹ to get their companies declared as ‘*dormant company*’.

Validity

The Scheme has become effective from 15 August 2014 and will remain in force until 15 October 2014.

1 An “inactive company” is defined under section 455(1) of the Act as “a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.”

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Applicability

The Scheme can be availed by a “*defaulting company*” which has been defined under the Scheme as a company which has made a default in filing of annual statutory documents.

- *The Scheme will apply only to the filing of the following documents:*
 - a) Form for filing annual return by a company having share capital.
 - b) Form setting out particulars of Annual return for the company not having share capital.
 - c) Forms for filing Balance Sheet and Profit & Loss account.
 - d) Form for submission of compliance certificate with the ROC.
 - e) Form for intimation for appointment of Auditors.

- *The Scheme will not apply to:*
 - (a) companies against which action for striking off the name has already been initiated by the ROC;
 - (b) where any application has already been filed by the companies for action of striking off name from the ROC; or
 - (c) where applications have been filed for obtaining ‘Dormant’ status under the Act; and
 - (d) vanishing companies.

Reduced additional fees:

The defaulting company is required to pay statutory filing fees as prescribed under the Companies (Registration Offices and Fee) Rules, 2014 with additional fees at a reduced rate of 25% of the actual additional fees payable, as on the date of filing of each belated document.

Grant of immunity from prosecution:

• *Application for immunity*

The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically to the ROC. Such an application can be made after the document(s) in respect of which the application is made are taken on file, or on record or approved by the ROC. The e-Form may be filed thereafter but not later than three months from the date of closure of the Scheme. No fee is payable on this Form. After the immunity is granted, the concerned ROC shall withdraw the pending prosecution(s), if any, before the concerned Court.

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- *Immunity not applicable in certain cases*

The immunity granted under the Scheme will not be applicable if (a) any appeal is pending before the court of law; and (b) in case of management disputes of the company pending before the court of law or tribunal.

- *Withdrawal of appeal against prosecution*

If the defaulting company has filed any appeal against any notice issued or complaint filed before the competent court for violation of the provisions under the Companies Act, 1956 or Act in respect of which application is made under this scheme, before making such application, the applicant will have to withdraw the appeal and furnish proof of such withdrawal along with the application.

Applicability in case of companies availing the Scheme

The Act provides that a person is disqualified to be appointed as director of the company if he is or has been a director of a company which has not filed financial statements or annual returns for a continuous period of 3 financial years.

SCHEME FOR INACTIVE COMPANIES:

The Scheme provides that defaulting inactive companies filing documents under the Scheme, may simultaneously apply either to get themselves declared as ‘dormant company’² under the Act or for striking off the name of the company.

CONCLUSION:

The Scheme grants a transitional period/ one-time opportunity to defaulting companies to make good their default by filing belated returns, thereby providing them with an opportunity to avoid attraction of higher fees/ fine and other penal action, including disqualification of directors as prescribed under Act. Additionally, the filing of these annual documents will also help the ROC in maintaining up-to-date records.

² A company can be classified as dormant when it is formed and registered under this 2013 Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction. Such a company or an inactive one may apply to the ROC in such manner as may be prescribed for obtaining the status of a dormant company.

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