

# L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

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**CORPORATE**

# LLP Settlement Scheme



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exceeding expectations  
SINCE 1985





Upon representations by various stakeholders and in the interest of all limited liability partnerships (“**LLPs**”), the Ministry of Corporate Affairs (“**MCA**”) recently came out with the LLP Settlement Scheme 2020. The purpose of the scheme is to condone the delay in filing of documents and provide a one-time waiver to LLPs from prosecution and imposition of additional fee, in order to enable LLPs to file all their documents.



# LLP SETTLEMENT SCHEME

The central government in exercise of its powers under Section 460 of the *Companies Act, 2013* ("**Companies Act**") introduced the LLP Settlement Scheme, 2020 to grant a defaulting LLP a one-time window to condone the delay in filing of statutory returns and other forms as required with the Registrar of Companies ("**RoC**"). The MCA *vide* General Circular No – 6/2020 dated March 4, 2020 ("**Circular**") issued the scheme after receiving representations from various business houses for waiver of fee, including additional fee, or condonation of delay taking the plea of excessive financial burden.

Thereafter, the MCA, *vide* General Circular No – 13/2020 dated March 30, 2020 ("**Modified Circular**") modified the contours of the LLP scheme. This was done *inter alia* in order to support and enable LLPs registered in India to "focus on taking necessary measures to address the COVID-19 threat". The Circular, read with the Modified Circular, thus imputes two sets of LLP schemes – one that was applicable from March 16, 2020 till March 31, 2020 ("**LLP Scheme 1**") and the other that is applicable from April 1, 2020 till September 30, 2020 ("**LLP Scheme 2**"). The salient features of both are set out below.

## LLP Scheme 1

Paragraph 8 of the Circular sets out the LLP Scheme 1. Under this, any defaulting LLP was permitted to file belated documents which were due for filing till October 31, 2019, in accordance with the provisions of the LLP Scheme 1. The specific documents to which the LLP Scheme 1 applied are set out in Paragraph 8(vii) of the Circular, namely:

- i. Form-3: information with regard to the LLP agreement and changes, if any, made therein;
- ii. Form-4: notice of appointment, cessation, change in name / address / designation of a designated partner or partner and consent to become a partner / designated partner;
- iii. Form-S: statement of account & solvency (annual or interim); and
- iv. Form-11: annual return of LLP.

The LLP Scheme 1 has been categorically made inapplicable to LLPs that have made an application in Form 24 to the RoC for striking off its name from the register as per the provisions of Rule 37(1) of the LLP Rules, 2009.

Any defaulting LLP was permitted to file the abovementioned documents, which were due for filing till October 31, 2019 in accordance with the provisions of the LLP Scheme 1. To avail this, the defaulting LLPs were required to make a payment of additional fee of Rs. 10 (ten) per day for delay, in addition to any fee

as is payable for filing of such document or return. The additional fee in this case was capped to an aggregate of Rs. 5000 (five thousand) per document. The defaulting LLPs, which filed their pending documents till March 31, 2020 and made good the default, would not be subjected to prosecution by the RoC for such default.

It may be noted that the date of applicability of LLP Scheme 1 originally was from March 16, 2020 till June 13, 2020. However, *vide* the Modified Circular, the conclusion date was changed to March 31, 2020.

## **LLP Scheme 2**

As discussed above, LLP Scheme 2 was introduced through a modification of the original Circular, specifically through insertion of Paragraph 8A. Under the LLP Scheme 2, which is applicable from April 1, 2020 till September 30, 2020, any defaulting LLP is permitted to file belated documents, which are due for filing till August 31, 2020 in accordance with the provisions of the LLP Scheme 2. The term 'belated documents' has been defined in Paragraph 8A(ii)(d) to mean "all documents or forms which are required to be filed in the MCA-21 registry under the provisions of the LLP Act, 2008 and the rules made thereunder." Therefore, while the LLP Scheme 1 sets out a list of documents / filings in respect of which the scheme may be availed, the LLP Scheme 2 has provided for a wider definition of the term 'belated documents'.

Similar to the LLP Scheme 1, the LLP Scheme 2 is also not applicable to LLPs that have made an application in Form 24 to the RoC for striking off their name from the register as per the provisions of Rule 37(1) of the LLP Rules, 2009.



Pursuant to LLP Scheme 2, any defaulting LLP can file belated documents that were / are to be filed till August 31, 2020 by merely filing the document and making payment of the respective fees associated with the filing. Thus, contrastingly, under LLP Scheme 2 no additional fee is required to be paid by any defaulting LLP. Additionally, under the LLP Scheme 2 as well, defaulting LLPs which file their pending documents till September 30, 2020 and make good the default, would not be subjected to prosecution by the RoC for such default.



## IMPLICATIONS FOR LLPs

LLPs that did not avail of the LLP Scheme 1 that was applicable till March 31, 2020 now have the opportunity to make good their defaults in respect of filing of documents till September 30, 2020 under LLP Scheme 2. The Circular read with the Modified Circular gives the RoC the power to take necessary action under the LLP Act, 2008 after September 30, 2020, in respect of the defaulting LLPs that have not availed of either of the LLP schemes.

Such measures introduced by the MCA which provide for much needed relaxation for LLPs are a welcome move. Instead of being penalised, LLPs now have a chance to make good their default and start over with a clean slate. In light of the hardships that many entities are facing in the wake of disruption caused by COVID-19, such a move by the MCA will definitely ease the compliance burden on such entities.

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